

1776. December 17. ROBERT M'GHIE *against* TINKLER.

ROBERT M'Ghie, tenant in Avon Mill, brought an action against Quartermaster Tinkler of the First Regiment of Dragoons, for payment of L.10 Scots, as the price of a boll of beans furnished him when quartered at Hamilton, in spring 1764. The action was brought against him before the Bailies of Hamilton, 6th June 1769, who allowed a proof of the furnishing, and an oath in supplement, and afterwards decerned for the price. Tinkler suspended, and pleaded the triennial prescription. To which it was answered, that, as he marched to England with his regiment immediately after the debt was contracted, and did not return till soon before the action commenced, M'Ghie had it not in his power to demand payment in a legal way in this country, where, being an Englishman, he had no *forum originis*; neither could he found a jurisdiction by an arrestment, for he had left no effects to arrest; and, as to suing him in England, the expense of bringing a proof in that country would greatly have exceeded the debt. Lord Alva, Ordinary, by his first interlocutor, 7th December 1774, found the letters orderly proceeded, but afterwards, 4th July 1776, he found that the triennial prescription took place in this case; and, in regard that the charger did not offer to prove resting owing by the oath of the suspender, he suspended the letters. And this day, on advising bill and answers, the Lords adhered, but gave expenses to neither party.

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1776. December . SCOTT of SCALLOWAY *against* BRUCE STEWART.

THE decision, January 17, 27, *Elliot of Arkleton against Maxwell of Nithsdale*, observed by Lord Kaimes, that a recorded reversion could not be cut off by 40 years' possession on absolute titles, is not approved of. It occurred in a case reported by Lord Braxfield, as Lord Probationer, December 1776, *Scott of Scalloway against Bruce Stewart of Symbister*. In this case, it was held that possession for 40 years, on absolute titles, will work off every fetter or reversion whatsoever. If an heir, whose predecessor's right was redeemable in virtue of a reversion, either registered or engrossed in the body of his infestment, makes up titles as absolute proprietor, leaving out the right of reversion, he will be rendered secure against all challenge by the positive prescription. And, in the case of tailyies, an heir whose predecessor was fettered by the strictest tailyie, may get quit of it by making up his titles in fee-simple, leaving out the tailyie, and possessing them for 40 years. This was the doctrine held by the Judges to be law, in deciding this case, *Scott against Stewart*, and so reported by Lord Probationer. It occurred in a reduction, and in a question of a production to exclude; and, had there been no other objection, the Lords would have found it sufficient to exclude; but, there being an objection to the sasine on which the prescription was founded, (which see sasine, p. ,) they pronounced this interlocutor:—"Find that the defender has not yet produced sufficient to exclude; and, therefore, that a day falls to

be assigned to him to satisfy the production ; but reserve to him, at discussing the reasons of reduction, to found upon his titles now produced, and, to the pursuer, his objections against the same, as accords, and remit.

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1776.      ROSS of AUCHNACLOICH *against* MACKENZIE of ARDROSS.

IN the cause between M'Kenzie of Ardross and Ross of Auchnacloch, the Lords found, that a decret of adjudication, though completed by charter and sasine, may be cut off by the negative prescription, as to some of the subjects which have never been possessed, although it has been continued in force as to the other subjects upon which possession had followed ; and, upon this ground, the heir of the family was preferred to the adjudger, with respect to certain of the lands under adjudication, but never possessed by the adjudger ; though, as to the other lands in the adjudger's possession, the adjudger was preferred.

How far diligence against a principal saves against prescription in favours of the cautioner, see reclaiming petition, *Boyd's Trustees against Earl of Home*, refused 27th February 1777.

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1777.      MARCH .      M'TAVISH *against* CAMPBELL of KILBERRY.

CAMPBELL of Kilberry granted commission to M'Tavish to be his wood-keeper, and, *inter alia*, with power to cut as much hazel as he should think proper, out of the price whereof he was to retain £12 Scots of yearly wages. Soon after, Kilberry prohibited all cutting of hazel, and M'Tavish having continued in his service for 17 years, pursued him for £17 sterling of wages ; against which, one of the defences pleaded for Kilberry was, the triennial prescription. To this defence, however, the Lords seemed to pay little regard, the debt being constituted by a written obligation ; and M'Tavish having obtained decret against Kilberry, before the Sheriff of Argyleshire, the Lord Auchinleck, Ordinary, found the letters orderly proceeded, and gave expenses : and the Lords adhered.

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WILSON *against* CAMPBELL of OTTAR ; and M'LEAN *against* DUKE of ARGYLE.

WHERE a person, standing infert in lands as proprietor, purchases in a life-rent affecting these lands, prescription will run in his favours against the person and his heirs from whom the life-rent flowed. The life-rent will be considered as a burden upon his possession ; and his possession, even under that burden, and more so when freed of that burden, will be considered as in virtue of his property as *dominus*, and give him the benefit of prescription. If indeed