

tradesmen for repairing the church, to be examined anent what was then communed to be given to Dalswinton for his proportion, in respect he was at the greatest charge in repairing it. Some of the Lords inclined to think that Kilbean could not transfer or alienate his room in the church to Garnsalloch, but that it passed only *cum territorio*, and with the lands; but this was not decided. See Dirleton's Doubts and Questions, *voce* Prescription, Where *loca publica præscribi possunt*.
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1699. *November 23.* JOHN TOD *against* ROBERT WIGHTMAN.

ANSTRUTHER reported John Tod in Reidaikers against Robert Wightman, merchant in Musselburgh. The said John, being a tenant in a grass-roum to the Earl of Traquaire, sold yearly his wool and cheese to the said Robert; and there was a current trade and commerce betwixt them for 24 years, *viz.* from 1674. He now pursues him for payment of all the goods he had delivered during that space. Wightman ALLEGED, on the 83d Act 1579, That all above three years before the date of the summons is prescribed *quoad modum probandi* by witnesses, and can only be proven *scripto vel juramento*. ANSWERED,—It has been a current account from the date of their first correspondence, and so could not prescribe; as has been always decided in merchants' and tradesmen's accounts; and particularly 13th *November* 1677, *Wilson against Ferguson*. REPLIED,—That takes place in petty accounts, where things are sold in small and by retail; but not where bargains are made in gross and by the bulk; and here the subject of their yearly traffic would amount to L.1000 Scots and more *per annum*; and can it be imagined that all that was trusted through such a long tract of time as 24 years? And to allow the pursuer to prove delivery of the goods by his servants, for all that space, were to ruin the defender, who cannot prove his partial payments. Likeas, the pursuer behoved to pay his rent yearly; and out of what else could that be done but the product of the ground he sold to the defender? And at this rate a merchant, buying bear or other victual, might be pursued for 20 years back, and the delivery proved by servants who bought it in. Likeas, this defender produced a letter, whereby he desired the pursuer to advance him L.50 sterling to account, and if he was not debtor in so much, he would repay it; which imported that all these bygones could not be owing. Likeas, in a former process betwixt them, the defender's oath of calumny being craved, he had deponed the balance betwixt them was very small.

Some of the Lords inclined to think that the currency of accounts, so as to interrupt prescription, could not be extended to such furnishings as this: But the Lords, on the separate grounds of the pursuer's letter, and the defender's oath, did sustain the defence of prescription for all years above the three last.
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1699. *November 28.* ANNA HAMILTON *against* LORD TORPHICHEN.

ANNA Hamilton, relict of Sandilands of Hilderston, having adjudged 10,000