

and found the possession ascribable to the liferent. 23d July Adhered to the last. 30th July Adhered to the whole.

No. 2. 1752, Jan. 24. GRAY of Darngavell *against* RUSSEL and OTHERS.

IN the process for division of the muir of Auchtermuir there were two questions, Whether Gray was entitled to six souns pasture more than the other feuars, because of a clause in his original feu, as old as 1618, by the family of Yester, giving him six souns more than they formerly possessed, *i. e.* before his or any other lands were feued, which the other feuars said was not giving him more than them, but making him equal with them? But as there could be no proof of the possession before 1618, he having proved immemorial possession of six souns more than the rest, the Lords presumed *retro*, and found him entitled to it. The next question was the rule of division,—Whether the act of Parliament referred to the valued rent, or the merk land, or the real rent? But as the property was in the family of Tweddale, and they had originally only common pasturage, and in 1708 the Marquis gave them a power to improve,—according to the decision betwixt Sir Robert Stewart and his Feuars, (Dict. No. 8. p. 2469.) there could be no division on the act of Parliament, since Tweddale is still proprietor, and were there any mines or minerals they would belong to him; and that addition of six souns was also a bar to dividing by the valuation; and as hitherto they had possessed equally with that exception,—therefore found the division ought to be according to their possession, 10th December 1751.—24th January Adhered, and refused a reclaiming bill on answers.

PRESCRIPTION.

No. 1. 1734, Jan. 25. MENZIES OF PITFODELS *against* TOWN OF ABERDEEN.

(This case is not mentioned in the manuscript Notes.)

No. 2. 1734, Feb. 14. ALEXANDER CRICHTON *against* EARL OF KILMARNOCK.

See No. 11, *voce* MINOR.

No. 3. 1735, June 25. THE MARQUIS OF ANNANDALE *against* LORD HOPE.

See Note of No. 12, *voce* MUTUAL CONTRACT.