

## PRESCRIPTION.

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1734. *January 25.*

MENZIES of Pitfodels *against* The TOWN of ABERDEEN.

No. 1.

PRESCRIPTION NEGATIVE,—not pleadable against any of the subjects in a vassal's charter by a singular successor in the superiority, whose charter expressly contains the *reddendo* payable by that vassal, *secundum dicti vassalli chartam et infeofamentum ejusdem*. *Sed vide*, if this was afterwards altered. (See NOTES.)

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1734. *February 14.*

ALEXANDER CRICHTON *against* The EARL of KILMARNOCK.

No. 2.

ACCOUNTS betwixt merchant and merchant are excepted from the English statute of limitations, as was found in this case.

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1735. *June 25.* The MARQUIS of ANNANDALE *against* LORD HOPE.

No. 3.

CERTIFICATION was granted against the Marquis of Annandale's procuratory of resignation, notwithstanding the 218th act 1594, and that infestment had followed upon it and possession more than 40 years, including the time of the Marquis. But some thought the act concerned only separate procuratories where the dispositions were produced; others thought that this Marquis's possession could not be counted. *Vide inter eosdem voce* MUTUAL CONTRACT.

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1735. *July 10.*

GRAHAM of Dougalstone *against* DOUGLAS of Barloch.

No. 4.

A SERVITUDE may be lost *non utendo*, though contained in the rights of the servient tenement, where it is not in favours of the superior. (See DICT. No. 52. p. 10745.)