No. 20. 1739, Dec. 5. T. M'DOWALL *against* BARBARA M'DOWALL, &c.

(THE Notes relative to this case are subjoined to the text.)

No. 21. 1740, July 16. EARL OF BREADALBANE *against* MENZIES, &c.

THE Lords found that servitude of pasturage and sheilling upon a Royal forest may be acquired by prescription, and that Culdares and Kirknock have prescribed the same; and remitted to the Ordinary to hear parties as to the extent of the servitude, both as to the limits of the ground and the number of cattle. I had no difficulty as to any part of this but the first, whether by the law of Scotland a servitude is prescriptible, notwithstanding the acts of Parliament, on a Royal forest.

No. 22. 1740, Dec. 7. GEDD *against* BAKER.

See Note of No. 28. *voce* ADJUDICATION.

No. 23. 1741, Nov. 24. GULLIN *against* HENDLY.

See Note of No. 1. *voce* FOREIGN.

No. 24. 1742, Dec. 2. LORD LOVAT *against* LORD FORBES.

FIND that Lord Forbes may claim the benefit of the English statute of limitations; but remit to the Ordinary to hear parties, whether he is in the case of the exception from that statute. This last I moved because of the dispute in our roll not yet decided betwixt Middleton and Colonel Cathcart.

*** The case of Middleton is thus mentioned, 9th December 1742:

THE first question is, Whether the law of England or of Scotland must be the rule of judging in the question of prescription of this transaction, which passed in London in 1720?—and we agreed to the judgment given 2d instant, betwixt Lord Lovat and Forbes, that the English law was the rule; but what the construction of that law was, we all doubted; particularly first, Whether being in Scotland is the same as being beyond seas? 2dly, Whether the words "at the time of any such cause of action given or accrued," means when it first accrued, or any time within the six years? And as to both points, allowed either party to bring what evidence they can of what is the law of England.

No. 25. 1743, Nov. 25. GARDEN of Troup *against* MR T. RIGG.

See Note of No. 1. *voce* ADVOCATE.

No. 26. 1745, June 7. JOHNSTON *against* BALFOUR of Beath.

BY marriage contract 1650, betwixt Robert Stuart of Beath, and the pursuer, she was provided to the liferent of the house, yards, and coal, and to an annuity to be uplifted out

of the lands of L.1000 Scots yearly after his death. An apprising was led by her and her second husband, James Balfour, against her son, as charged to enter heir to his father, the said Robert, for payment of L.4500 of bygones; and in 1664 and 1694 obtained charter of apprising, on which sasine followed in 1699. In 1697 they disponed to their son Henry Balfour, on which he was infeft; and they and their heirs have possessed ever since. Johnston got a bond (I suppose in trust) from Balfrages, as apparent-heirs of Robert Stuart, and adjudged, and thereon pursued reduction; and Balfour produced the above charters and sasines, and offered to exclude, and to prove 40 years uninterrupted possession. I allowed a proof, and assigned the same day for the first term; and he proved 60 years possession; but the pursuer produced the contract of marriage 1650, (but whereon no infeftment had followed) and a tack set by Marion Bruce and her husband in 1670, of a part of these lands, wherein she is designed liferentrix of the lands underwritten, but which was only signed by the tenant, but not by her or her husband; and insisted that no prescription could run during the life of Marion Bruce, the liferentrix, who died only in 1708, not only because the heritor was *non valens*, but also because the liferentrix, having entered to possess as liferentrix, *non potuit mutare causam possessionis*, therefore the possession cannot be ascribed to the infeftment of property; and therefore the defender cannot subsume in terms of the act 1617; and quoted the cases, ult. February 1666, Earl of Lauderdale, (Dict. No. 379. p. 11,205.) 17th January 1672, Young, (Dict. No. 381. p. 11,207.) and February 1680, Brown against Hepburn, (Dict. No. 382. p. 11,208.) and the liferent was no title of possession of the lands, but only of the house, yards, and coals. 2dly, The brocard *non potuit mutare causam possessionis* does not hold in the case of the long prescription, 27th November 1677, Grant against Grant, (Dict. No. 135. p. 10,876.) 20th February 1675, Earl of Murray against Wemyss, (Dict. No. 15. p. 9036.) Stair, PRESCRIPTION, § 19. This case I reported,—and we unanimously found the prescription instructed, and that the defender excludes the pursuer, and sustained the defence. Arniston and the rest laid their opinion on the liferent being an annuity and not a locality; for Arniston said, that had it been a locality, he thought the possession must have been ascribed to it as the preferable title.

## No. 27. 1746, June 13. EARL OF CAITHNESS, *against* SINCLAIR OF ULBSTER.

THE Lords first adhered to the interlocutor, that the Earl's minority must be deducted from the date of the first disposition 1691, and not from the date of the second disposition 1702, and next adhered to the other interlocutor, finding that the minority stops prescription of the apprising only *qua* such, reserving to parties to be heard upon the effects of that interlocutor; and refused the additional petition on *bona fides*, or rather *mala fides*, of Ulbster and his authors.

## No. 28. 1746, July 30. WALTER RUDDIMAN *against* TRADES MAIDEN HOSPITAL.

A BOND dated 1689 being assigned in 1695 to a blank person, the bond was registrate in 1703, but the assignation not registered nor heard of till after 1733, when the pre-