

1775. August 2. ELIZABETH MACKENZIE *against* JAMES FEA and ROBERT LAING.

PRESCRIPTION.

The positive prescription whereby the property of a subject hath been acquired, has no effect against a *jus crediti* over that subject, when it is saved from the negative prescription.

[*Faculty Collection, VII. 124; Dictionary, 10,774.*]

COALSTON. One party may have acquired right to the property by positive prescription, while another may have right to incumbrances. Here there is possession beyond the years of prescription; hence property of the lands. But the question is, whether the heritable bond be still an incumbrance? Interruptions are said to have occurred, particularly pointing of the ground: these are documents against the adjudger in the course of acquiring.

KAIMES. Positive prescription gives a right by Act 1617 against every one competing for the property, but that will not hurt the interest of incumbrancers. If incumbrancers have not lost by the negative prescription, the positive prescription will not be good against them. There may be a competition upon preferable rights, but *that* is not *hujus loci*.

COVINGTON. The title acquired by the adjudger cannot be better than the right of the ancient proprietor. If the plea rests on the right as creditor, he may defend himself as he best can.

On the 2d August 1775, "The Lords found that the bond is still a subsisting debt;" altering Lord Auchinleck's interlocutor.

*Act. R. M'Queen. Alt. Ilay Campbell.*

1775. August 5. ALEXANDER ELLIOT *against* HENRY RICHMOND and JOHN POLLOCK.

BILL OF EXCHANGE.

Found that, by the Act 12th Geo. III. c. 72, summary diligence cannot proceed by horning against drawers and indorsers of bills within the three days of grace.

[*Faculty Collection, VII. 132; Dictionary, 1602.*]

JUSTICE-CLERK. The whole difficulty lies in the words of the statute; for it is plain, from the whole circumstances of the case, that the suspenders did not consider the bill as subject to strict negotiation. But the words of the statute