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 poindings 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

are indeed very strong, and there is no getting over them. The words *duly negotiated* apply to all the subjects in the statute. It was inaccurate in the writer to the signet to issue summary diligence.

On the 5th August 1775, "the Lords passed the bill without caution."

Act. W. Baillie. *Alt.* A. Miller.

Reporter, Covington.

1775. *August* 8. SIR JAMES GRANT and OTHERS *against* DUKE of GORDON.

SALMON-FISHING.

Powers of the Crown in granting a right in cruive-fishing.

[*Faculty Collection, VIII.* 54; *Dictionary*, 14,297.]

COVINGTON. I would have doubted as to the clause of *novodamus* having so strong an effect, had it not been for the judgment of lawyers, and the decisions of the Court. Supposing the grant to be effectual, the question is, whether the Crown could grant it, after having made a grant of a currach fishing in the same bounds? There is no part in this river which is not covered with a salmon fishing of one kind or other. I would not choose to inquire into the extent of the king's power. At the same time I do not think that the Crown established cruives in any river in Scotland, unless it should be said that the grant in question, 1684, is an exception from this. The Crown cannot abuse its right, if it has one, in prejudice of the subject. It cannot ruin a salmon-fishing by turning the course, or shutting up the mouth of the river, by means of which the fish would be prevented coming up to spawn. Cruive-fishings are in some degree hurtful, and must therefore be construed in the strictest manner. It is admitted that the Crown cannot do any thing to hurt a general right of fishing. The right of the Cumins of Erneside is general. Heritors, whose estates lie adjacent to rivers, have a natural right to demand a grant of salmon-fishing *ex adverso* of their lands to the middle of the channel. Grants are generally so conceived; but, as this is attended with inconveniency from joint possession, the heritors on each side agree to fish promiscuously. It is said that, although the superior heritors had rights, yet that the Crown could grant other rights to the inferior. But here the Crown was in some degree denuded by the fishing exercised in the way of currach. That sort of fishing has been treated as contemptible; yet it was the most ancient, and, from the price paid for it 150 years ago, appears to have been a valuable fishing. In order to lessen its importance it has been always supposed that a grant of a currach fishing means only one currach. *That* is a mistake. One currach may be innocent; twenty will be destructive. Thus, one stoup net is so innocent as to be below the notice of the law, yet many were so hurtful as to require a special statute abolishing them.

GARDENSTON. There is only one point in this cause which admits of doubt, and