

1780. *December 22.* WILLIAM INNES *against* JOHN CLARK.

REMOVING.

[*Faculty Collection, VIII. 21 ; Dict. 13,871.*]

BRAXFIELD. In the case of the *Duke of Gordon* against *M'Vicar*, the same point was determined in favour of the tenant.

GARDENSTON. Had the substance of the Act of Sederunt been in the libel, *that* might have been sufficient, although the very words of the Act of Sederunt had not been recited.

COVINGTON. It is not necessary to libel the finding caution for five years ; that clause is in favour of the tenant, and he may plead on it in defence, if he will.

On the 22d December 1780, " The Lords sustained the defence, and suspended the letters ;" adhering to Lord Braxfield's interlocutor.

Act. Fr. Russel. Alt. Ld. Maitland.

1780. *December 22.* JOHN M'ADAM *against* JOHN FOGO.

HYPOTHEC—PRESCRIPTION.

Found, that although a writer hold possession of his client's papers, this does not interrupt the triennial prescription of his account.

[*Fac. Coll. VIII. 22 ; Dict. 6252.*]

BRAXFIELD. That I have a counter-claim is no reason for my not constituting ; for prescription may run in the interim. When a pledge is once constituted, the negative prescription will not run, because then there is possession : but, as to the case of a writer having retention, that does not necessarily suppose that anything is due to him. It is not an impignoration on a ground of debt : the account must be constituted.

JUSTICE-CLERK. It would have bad consequences were this privilege allowed to writers. The Ordinary appears to have gone, not on his own opinion, but on the authority of the only decision produced before him.

GARDENSTON. One decision is nothing. This puts me in mind of what Gulliver reports to be the law of England, that, if judges once go wrong, they make it a rule never to come right.

HAILES. I did not consider myself at liberty, in the Outer-house, to con-