

No 189.

ed, after a certain number of years, with this exception, unless the pursuer prove resting owing, by writ or oath, which is plainly distinct from the present case.

THE LORDS found it relevant by the defender's oath, to elide the defence of prescription, that the missives are true and holograph, and subscribed by him.

Act. *Fleeming*.Alt. *Hay*.Clerk, *Mackenzie*.

*Fol. Dic. v. 2. p. 113. Bruce, v. 1. No 133. p. 175.*

1725. *July 3.*

WALTER GRAHAM of Kilmardinny *against* COCHRAN of Kilmarnock.

No 190.

MR WILLIAM COCHRAN of Kilmarnock granted a holograph bond to Walter Graham of Kilmardinny, and after 20 years Kilmardinny pursued the heir of Kilmarnock for payment, who *objected*, That the bond was prescribed by the act of Parliament of King Charles II. concerning prescriptions, which requires, 'That holograph bonds be pursued within 20 years, otherways they prescribe, unless the verity of such bonds is offered to be proven by the oath of the defender,' which Sir George Mackenzie interprets to be the oath of the subscriber; and in this case, the mean of proof being lost by his death, the bond falls.

THE LORDS find, that the word defender might be justly applied to the heir, who was defender in this action; and that his oath of knowledge of the verity of the bond was sufficient to support it.

Reporter, *Lord Milton*.For Kilmardinny, *Arch. Murray*.

*Fol. Dic. v. 4. p. 99. Edgar, p. 184.*

No 191.

The vicennial prescription, in terms of act 1669, c. 9. of a holograph missive letter of relief found to commence precisely from its date; and that the act admits not of any latitude

1773. *January 19.* ALEXANDER HOME *against* ALEXANDER DONALDSON.

THIS action was laid upon a letter of relief granted to the pursuer's father by the father of the defender in these words: 'August 20. 1742. Sir, As, at my desire, you have, of this date, accepted a bill with James Craw brewer in Canongate, for L. 20 Sterling, payable against Candlemas next; therefore, I hereby promise to keep you free from payment of the said sum, interest and damages that may follow thereon. (Signed) *Alexander Donaldson*.' Directed, 'To Mr John Morison-Hume of Law, residenter in Canongate.' The pursuer subsumed, that, in the year 1759, he, in order to relieve his father, and upon being applied to for payment of the relative bill by Messrs Hogg, to whom it was accepted, his father being then *non compos mentis*, had accordingly