

gence being, by the statute, an interruption of the prescription, it behoved to have that effect.

But the Lords found,—That the diligence was no interruption of prescription in this case, because there was no prescription by this statute, but a limitation of the cautionary obligation to a certain term; so that the effect of the diligence was not to continue the obligation beyond that term, which could not be by the nature of it, but only to secure what falls due within that term. See *Forbes, December 10, 1712, Stuart against Douglas.*

1741. December 5. COCKBURN *against* GRANT.

[C. Home, No. 110.]

IN this case the Lords found,—That the seller of smuggled goods was not obliged to deliver, nor, *vice versa*, the buyer to receive them. The *ratio decidendi* is the smuggling Act, 11 G. II, by which the buyer of such goods may, when they are offered to him, seize them for his own behoof without paying the price; and, on the other hand, the seller may, after delivery, seize and take them from the buyer; so that the law never can oblige the seller to deliver his goods to have them seized, nor the buyer to receive, to have them immediately retaken.

The Lords, notwithstanding, would find the buyer liable in the price if he received the goods; and did find him liable,—July 1745.

1741. December 5. ——— *against* ———.

[Elch., No. 2, *Promissory Note.*]

THE Lords found,—That an indorsation not holograph, in Scotland, of a promissory note, was not a habile conveyance, notwithstanding there was here no competition of creditors; but the single question was betwixt the debtor in the note and the indorsee.

1741. December 9. SINCLAIR of FRESWICK *against* MURRAY of CLARDEN.

[Kilk., No. 1, *Wadset.*]

THIS was a question about the redemption of a wadset. The wadsetter had disposed a considerable part of the wadset lands, and of the remainder that continued in his hands the reverser assigned the reversion to a third party, who premonished the wadsetter, and consigned a certain sum as his proportion of the re-