1773. *January* 19. ALEXANDER HUME of Coldingham *against* ALEXANDER DONALDSON.

PRESCRIPTION.

The vicennial prescription, in terms of 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 in that respect, even in a question with the heir of the creditor, pleading both ignorance of his right and that it was in its nature not an absolute obligation, but pendent upon a condition, and therefore the prescription could only begin to run from the time of the distress, as in the case of warrandice.

(*Faculty Collection, VI.* 122; *Dictionary,* 10,992.)

KAIMES. I doubt whether the vicennial prescription can take place while there was no distress. Besides Hume was *ab agendo.*

AUCHINLECK. The law distrusts such holograph obligations, and, therefore, after twenty years, holds them to be good for nothing, unless instructed by oath. The subsistence of such obligation depends on its age, not on the casual condition of the granter.

On the 19th January 1773, the Lords sustained the defence of vicennial prescription; adhering to Lord Stonefield's interlocutor.

Act. James Grant. *Alt.* John Douglas.

1773. *January* 19. ANDREW GARDINER *against* ROBERT EWING.

DECREET-ARBITRAL.

No good objection found to lie on the ground of defect of proper evidence of the arbiters' having differed in opinion, so as to make way for the decision of the oversman, against decreet-arbitral pronounced by him; seeing that the decreet bore a recital of his own appointment by the two arbiters, conform to a minute subscribed by them, naming him to be their oversman, in regard they could not precisely agree touching the decision to be pronounced with respect to the matter thereby submitted; his taking upon him the determination in that capacity, and his having, in conjunction with one of the arbiters, made choice of a clerk conform to another minute, subscribed by the said arbiter and him, and produced.

[*Dictionary,* 559.]

GARDENSTON. I am not satisfied with the decision in Dalrymple. It is suf-