

1784. June 23. JAMES GORDON *against* WILLIAM BOGLE.

JURISDICTION.—PRESCRIPTION.

1. Found, that the Court of Admiralty is competent to grant Decree for a Debt due by an Inland Bill.
2. Found, that a blank summons does not interrupt prescription ; but that action against one of the *correi debendi* does.

[*Fac. Coll. IX. 249 ; Dict. 7532.*]

BRAXFIELD. Every bill of exchange is held to be mercantile, and the Judge-Admiral has a jurisdiction therein by practice. As to the *second* point, it is clear, because one of the *correi debendi* was cited within the six years.

JUSTICE-CLERK. Perhaps it had been better if the jurisdiction of the Admiral had not been so far extended as it has been ; but there is no help for that now. I should doubt as to the *second* point, that a blank summons can interrupt prescription, since the law requires a proper document : but Lord Braxfield's argument on the specialty of the case is conclusive.

PRESIDENT. The interlocutor of the Judge-Admiral is singular. His own court, notwithstanding what he has found, is competent, from practice. I am clearly of opinion that a blank precept is no interruption of prescription. Suppose the pursuer to be creditor in different bills, how can a blank precept apply to one bill more than another ? The *document* required by the statute must be taken on a particular debt.

ESK GROVE. In the case of the long prescription, a *document* is necessary ; but, in the case of the short prescription, a *demand* made seems sufficient, because that takes off the presumption of payment.

SWINTON. Action cannot be said to be commenced on a blank precept.

On the 23d June 1784, " The Lords sustained the jurisdiction of the Admiral ; found that a blank summons does not interrupt prescription, but that action against one of the *correi debendi* does ;" varying the interlocutor of Lord Eskgrove.

*Act.* John M'Laurin. *Alt.* Archibald Campbell.

1784. June 25. JAMES HAY, &c. *against* ROBERT DOW.

HYPOTHEC.

A Landlord may, *currente termino*, not only sequestrate, but also roup the hypothecated Effects of his Tenant, if insolvent.

[*Fac. Coll. XI. 253 ; Dict. 6202.*]

BRAXFIELD. The landlord's hypothec must be used with discretion. The

landlord cannot sequestrate while the tenant is going on in business ; for how can a tenant pay his rent, if he be not allowed the use of his crop? The case is different when a tenant becomes *lapsus*. If the landlord be entitled to sequestrate, he may roup, for otherwise the subject may be dilapidated. Cattle must be rouped, for otherwise they will eat up their own value. As to the other point,—at common law, a tenant is bound to stock the farm ; and, if he does not, the landlord is entitled to call upon him to do it, to find caution, or to remove.

On the 25th June 1784, “ The Lords sustained the defences, and assoilyied ;” adhering to the interlocutor of Lord Elliock.

*Act.* H. Erskine. *Alt.* A. Crosbie.

1784. June 29. WALTER M'DOWAL *against* JAMES M'DOWAL, &c.

#### SERVICE AND CONFIRMATION.

Possession of the Defunct's Moveables by the nearest of Kin vests him in the Rights of the Subjects possessed only.

[*Faculty Collection, IX. 255 ; Dict. 14,404.*]

KENNET. The Court has found a title by possession of *ipsa corpora*, or by confirmation, although partial ; but *here* no title at all would prefer nearest in kin.

BRAXFIELD. A number of decisions are quoted, but not to the purpose. In order to give an active title, confirmation is necessary. Intromission is a passive title, but no more.

ESK GROVE. This case was determined last winter ; *Gib.*

GARDENSTON. I doubt that we have already gone too far as to the vesting right in moveables ; but I am clear not to go farther.

On the 29th June 1784, “ The Lords preferred the nearest in kin.”

*Act.* George Currie. *Alt.* A. Elphinston.

*Reporter, Alva.*