had difficulty as to the second ground, but was of the opinion upon the first ground that it was not liquid. But we gave no judgment, because Knapperny offered to prove by Walkingshaw's oath the verity of his grandfather's subscription.

No. 16. 1737, Dec. 23. KERR *against* CRICHTON, (or BRIGHTON.)

See Note of No. 17, *voce* ADJUDICATION.

No. 17. 1738, Feb. 9. CAPTAIN RUTHERFORD *against* SIR J. CAMPBELL.

IN this question between these parties concerning an account furnished in England to Sir James Campbell, Whether the prescription should be judged according to our law or the English statute of limitations? the effect of which was that if ours was the rule, then the debtors oath was still competent; but if the English then there did not lie any action; we gave no decision on that point, because it seemed to have been already determined by the Ordinary and adhered to in presence some time ago, that the English statute was the rule; and most of us seemed to continue of the same opinion, not only for the decisions quoted in the papers, but also another solemn one in the case of D. Hamilton, about the year I think 1721 or 1722. But Arniston thought that a debtor had the benefit of both statutes and might plead either of them that was most beneficial to him, which opinion seems to deserve consideration. But then Sir James Campbell having come to reside in Scotland before the time limited in the English statutes was elapsed, we found the action still competent by the acts 4 and 5 *Annæ* for amendment of the laws, &c.; though that act mentions only the debtors being beyond seas, which we found *ex paritate* included his coming to Scotland.

No. 18. 1739, Jan. 17. EARL OF GALLOWAY *against* THE FEUARS OF WHITEHORN.

THE Lords having in July last found even the annexed property prescriptible by the positive prescription, but that Earl of Galloway had actually acquired right by prescription; they this day unanimously adhered. The question was concerning the heritable office of Bailie of Regality of Whitehorn, comprehended under the general annexation in 1587, but disponed to Lord Garlies by the Crown in 1588. The cause was given for the Earl on several other grounds all separately determined, but this only I mention being a general point of law.

No. 19. 1739, Nov. 30. M'DOWALL *against* M'DOWALL.

THE Lords thought the not calling the summons within year and day was no objection to the interruption; but they found that the executing a blank summons was no interruption; and therefore adhered to the Ordinary's interlocutor, *renit.* Drummore, and Arniston, who mentioned a decision Earl of Hume against Earl Marchmont, but which Kilkerran said was not at all on this point.