name had been blank, yet his surname and designation were such as could be applied to no other but him.

2do. ALLEGED,—They had interlined the summons, and inserted his grandfather's name, as being lawfully charged to enter heir to him. The Lords found they might cut and mend their summons, any time before calling, on a new sight of the process in the clerk's hands. They also repelled this dilator, That he was charged to enter heir to his father; and *non constat* but he is yet alive, having gone some years ago to the Venetian service against the Turks, and was presumed *vivus;* for they considered he was habit and repute dead, and the party would take his diligence on his peril. *Vol. I. Page* 627.

1694. *July* 6. MARGARET CATHCART *against* BOYL of KELLBURN.

THE Lords found, seeing the term was circumduced against him for not proving his allegeance that he had arrested the rents by the baron officer's execution before her diligence, that it was not receivable now, on his offering to produce the same *in secunda instantia,* in a suspension, and purging his former failyie, to have been no design nor contumacy, because his agent's letter acquainting him therewith miscarried, or that the ranking of the creditors of Corshill is not yet closed: for the Lords considered that the term was circumduced against him in February, and yet it was not extracted till July thereafter; so he had four months' time; and, though the ranking be yet depending, yet it was determined she had the preference to him: which would wrong no other. *Vol. I. Page* 628.

1694. *July* 6. OGILVIES of KINALTIE and TARQUACHIE *against* LINDSAY of GLENQUHISH.

OGILVIES of Kinaltie and Tarquachie against Lindsay of Glenquhish, about a head roum, wherein neither of the parties were *expressum* infeft, but both of them pled it to be part and pertinent of their properties. The Lords allowed a conjunct probation as to their deeds of property and possession in the lands controverted these forty years bygone. But Lindsay, craving deduction of fifteen or twenty years' minority from Ogilvies' prescription, they reclaimed; because this would put them to prove sixty years' possession; which was impossible to do by witnesses under eighty years of age, who could not be got.

The Lords found they could not help them in this point; for the act anent prescription, in 1617, was clear that prescription ran against minors; but these years behoved to be deduced: and it altered not the case whether the prescription began before the minority existed or in the time when it was running.

On a bill, the Lords forbore that point of the minority till the conclusion of the cause; in regard neither of the parties had a special infeftment: which may alter the case. *Vol. I. Page* 628.