

tions or seasines shall be made otherwise, they shall be void and null in themselves. *Vide infra*, No. 370, [*Suitty* against *Bell*, July 1672,] and 381, [*Magistrates of Inverness* against *Forbes*, &c. Dec. 1672.]

Then Duff offered to prove simulation, because it being a disposition *inter conjunctas personas, videlicet*, Cullodin and his brother, it wanted onerous causes. To this it was ANSWERED, — That the disposition bore for onerous causes. *2do*, He was content to make faith upon them. *3tio*, If this would not satisfy, he offered to produce the bonds and discharges of debts he had paid as cautioner for his brother, far above the worth of their fishings.

The bonds being produced, they offered to prove one of the bonds were included in the other, and so they were not distinct sums.

ANSWERED, The dates, terms of payment, and all are different.

They likewise objected simulation, on this head, that of purpose he caused his seasine only be subscribed by one bailie, and kept beside the clerk a twelvemonth after, that it might be latent and come to the knowledge of few, and so the lieges not knowing thereof, might be ensnared to contract with his brother. ANSWERED, It was so far from being collusion or design, that the clerk being his enemy, kept it from him against his will, and he was forced to charge him with horning ere he could get it up.

The Lords ordained Cullodin to depone upon this last allegiance, who altogether denied it.

*Advocates' MS. No. 284, folio 120.*

1671. *December 5.* ANENT INTERRUPTIONS OF PRESCRIPTION.

I HEARD it doubted amongst the advocates, whether or no a bond or evident was prescribed, whereon nothing was done within the forty years but a naked charge to enter heir raised and executed, or if the said charge was sufficient to interrupt. I humbly think it was not a sufficient interruption, because the act of Parliament seems to require an express citation provoking to judgment; now a charge to enter is not a judicial act but only preparatory. *2do*, Such charges are general, and seldom condescend on the special actions the charger has to intent; and, therefore, seem not to induce *malam fidem*, unless we would say that there was nothing else betwixt you and me save this right now questioned as prescribed. But the 10th act in 1669 clears what interruptions are lawful now; for, in time coming, they must be citations executed by messengers at arms, and must be revived every seven years. *Vide supra*, number 215, (*July 11, 1671, Macrao* against *M'Donald*;) and *Gaillii observationes, libro observat. 67 and 76.*

*Advocates' MS. No. 285, folio 120.*