

by persons having right to grant the servitude, or by prescription. Replied, *In-ædificatum cedit solo*, upon a special ground of law, which cannot be extended in this case to what relates to other men's lands. 2. Prescription was interrupted by a declarator for demolishing the pursuer's dam, raised at the instance of the defender's authors, who were heritors of the superior mill, and of the land in which the dam-head was craved to be fixed. Duplied, The citation not being renewed within seven years, it is prescribed by the late Act of Parliament *quoad* the effect of interruption. 2. The declarator did not conclude that the dam should be simply demolished, but to the effect it might not occasion the superior mill to stand a-back-water; and the pursuer is content to be so regulated. Triplied, The late Act of Parliament concerns only interruptions by citation posterior thereto, and not interruption by citation anterior to the act; for, had such an extension been, it would have been expressed, as was done in the preceding Act about arrestments; especially considering, that, by the former law, there was a *jus quæsitum* to the party. And laws are not always to be extended upon parity of reason; nor did the Lords of Session find a year's duty due to a superior by an adjudger, though the Act of Parliament subjected apprisers to such a duty, and such an extension of the law had been rational. 2. Albeit the declarator mention expressly, in the conclusion, to be free of the inconvenience of standing a-back-water, yet it imports a reluctancy; and no acquiescence ought to be sufficient to interrupt as to all other effects: besides, interruption being favourable for maintaining of rights, and taking off negligence, any indication should suffice. The Lords found, That citations before the late Act of Parliament needed not to be renewed within seven years; but that the declarator was not a simple interruption, but only to the effect that the defender's superior mill might not stand a-back-water.

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1684. *March.* MR DAVID HUME *against* HUME of CROSSRIG.

A COMPRISER having called an apparent heir in a declarator of expiring of the reversion, the defender alleged, That the apprising was satisfied by a sale of part of the lands. Answered for the pursuer, That the defender had no interest to propone such an allegiance, without being served heir or infest. Replied for the defender, That he, being called as a defender, and not pursuing, had good interest to allege that the pursuer's right was extinct and satisfied. The Lords sustained the reply.

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1684. *March.* MR THOMAS RIGG *against* SIR WILLIAM PRIMROSE.

IN a competition betwixt an assignee to a debt due by the Lord Roxburgh to the Laird of Alva, and one who had arrested the same;—Alleged for the assignee, That he had done diligence against Roxburgh's heir; whereas the arrester had been *in mora*, and but lately raised his summons of forthcoming. An-