

1714. February 2.

HUGH ROSS of Jolly *against* MURDOCH M'KENZIE of Ardross and Others.

HUGH ROSS having, upon two apprisings of the lands of Auchnacloick and others, raised reduction and improbation against Murdoch M'Kenzie and others, of all rights to the said lands in their persons; the defenders *alleged* prescription against the pursuers' title; to which the pursuers *replied* upon interruption by a process of count and reckoning for extinguishing the defenders' titles by payment or intromissions; in which there was an act of count and reckoning extracted.

Answered for the defenders; When several actions are competent upon the same subject, the raising of one interrupts only as to the nature of the action; and the interruption is restricted to the intent and purpose for which it was made. So that the count and reckoning can interrupt only in order to extinction by payment, which is a homologation of the validity of the defenders' rights; and they are safe from quarrelling upon other heads by the negative prescription. Which is consonant to law and reason, and supported by decisions; 8th February 1676, Master of Rae *contra* L. Dunbeath, No 268. p. 11072.; 22d June 1681, Kennoway *contra* Crawford Newton, No 9. p. 5170.

Replied for the pursuer; No argument can be drawn from the act of prescription 1617 for the exclusion of this process, where the titles whereof it is a consequence, remain entire by interruption. If the right itself be preserved, and the adverse party's title interrupted, *perinde est* in what kind of process the pursuer insist for recovery of his just right; since a blank summons continued and kept waking 40 years would have intitled the pursuer to insist upon any reasons he thought fit. My Lord Stair asserts prescription to be interrupted and excluded by the dependence of any action whereupon the right might have been taken away or impeded. This is clearly founded in the analogy of our law, where citation to one of two *correi debendi* interrupts as to the other. Interruption of one part of a right operates as to the whole. And in a late case betwixt the Countess of Lauderdale and Viscount of Stormont, the Viscount's acquiring one debt of many contained in an apprising was sustained to interrupt prescription of the same as to all the apprising and debts therein contained, though the other creditors had insisted in no action, nor used any other document for interruption. An annual-rent out of several tenements, even belonging to different heritors, was preserved by interruption against one; 27th June 1671, Lord Balmerino *contra* Hamilton, No 413. p. 11234.; *Les Loix Civiles, tit. De la Possession, § 5.* The case of the Master of Rae *contra* Dunbeath (mentioned above) is nothing to the purpose in hand; for, *1mo*, Many specialties obtain in the short prescriptions which hold not in the long prescription of 40 years; *2do*, No wonder that the civil action was not interrupted by the criminal pursuit tending to a different end. Nor is the pre-

No 435.
Found in conformity with
Home against
Home, No
420, p. 11241.

No 435. sent case weakened by that of Kennoway *contra* Crawford (mentioned also above), seeing there only the proof of the reason of reduction was found prescribed.

Duplied for the defenders; The pursuer is not in the case of a blank summons for interruption, where it is optional for him to libel what he pleased, provided he duly waken the same; and even a blank summons of reduction could not interrupt prescription of other grounds of reduction than those evident at least from the title of the summons; 14th July 1669, E. Marshall *contra* Lieth, No 8. p. 10323. Though an action is consequential and dependant upon another interruption of prescription, the latter preserves the former; as a reduction and improbation of a right which tends to avoid it would save the right to pursue a declarator of extinction, which is one of the ways of avoiding it. But then an action of extinction by payment doth noways preserve a reduction and improbation upon initial nullities, which seem past from by the other. My Lord Stair's general expression, that "prescription is interrupted by the dependence of any action whereupon the right may be taken away," must be understood of taking away in the way of that action. For reduction *ex capite inhibitionis* would not interrupt as to a reduction raised after the years of prescription upon the act of Parliament 1621. The pursuers other citations are wide from the case. For though insisting in a principal cause interrupt prescription of an accessory, what hath that to do with the present question? If one action be saved in another heterogeneous action, that hath no influence upon it, viz. an action *ex natura negotii*, by an action upon the statute appointing the solemnities of real rights. So one part of a contract of marriage was voided by prescription, while the other part was preserved by interruption.

THE LORDS sustained the defence of prescription as to all other grounds of reduction and nullities, except those particularly libelled in the former process of count and reckoning at the pursuers' instance, and the reason of falsehood.

Fol. Dic. v. 2. p. 127. Forbes, MS. p. 21.

* * Similar decisions were pronounced, 11th February 1681, Kennoway against Crawford, No 9. p. 5170., *voce* GROUNDS AND WARRANTS, and 14th July 1669, Forbes against Earl Marshall, No 8. p. 10323., *voce* PERSONAL AND TRANSMISSIBLE.

1717. December 11. Dr WRIGHT *against* RICHARD WRIGHT of Kersie.

No 436.
Registration
of a bond, and
letters of
homing there-

DOCTOR WRIGHT pursues Richard Wright for payment of a sum contained in his father's holograph bond, dated in February 1685.

The defender having *alleged* prescription, it was *answered*; The prescription