

1780. February . LUTEFOOT against PRESTOUN.

JOHN LUTEFOOT pursues reduction against Glencorss *ex capite inhibitionis*. The defender *alleged* absolutor, because the inhibition is prescribed since the executions of the inhibition. It was *answered*, The registration of the inhibition was within prescription, and that being a diligence, which if wanting, the inhibition is null, prescription must be reckoned from it. It was *answered*, That decreets of registration are never accounted interruption, much less registration of inhibitions. The LORDS found the prescription to run from the last execution of the inhibition, but not from the registration. It was further *alleged*, That albeit prescription run from the date in question, yet there is not 40 years since the term of payment, before which the creditor *non valebat agere*.

THE LORDS found the prescription not to run from the date, but from the term of payment.

*Fol. Dic. v. 2. p. 123. Stair, v. 2. p. 761.*

\*.\* Fountainhall reports this case :

THE LORDS found, That naked registration of bonds was not an interruption; and that prescription of bonds runs only from their term of payment, and not from their date; for before the term, *non valet agere*.

*Fountainhall, MS.*

1682. November 22. MOUTRAY against HOPE.

IN an action of reduction, *ex capite inhibitionis*, pursued by Moutray against Porteous, of a bond granted by the common debtor, whereupon comprising had followed; and it being *alleged* for the defender, That the inhibition was prescribed, being served *in anno* 1633; and it being *replied*, That the prescription was interrupted by a comprising deduced upon the bond, which was the ground of the inhibition, and which diligence being upon the bond, did interrupt prescription thereof, and consequently of the inhibition which was accessory thereto; the LORDS found, That the comprising upon the bond was not an habile diligence, which could be ascribed to the inhibition; but they found, That the prescription did not run from the date of the inhibition, but from the date of the comprising, which was led upon the defender's bond, seeing the inhibitor could not know of the bond, until the diligence was done thereupon, to affect the heritable estate; therefore found, That prescription of the inhibition did only begin from the date of the defender's comprising.

*Fol. Dic. v. 2. p. 123. P. Falconer, No 32. p. 17.*

No 366.

Pound conform with Butter against Gray, No 363. p. 11183. Prescription of an inhibition found to run from the date of the last execution, and not from registration.

No 367.

Prescription does not run against an inhibition but from the date of the comprising used upon the bond granted by the person inhibited, in respect the inhibitor cannot know of the bond until real diligence be done on it.