

## DIVISION XVII.

## Prescription of Interruptions.

1586. *January.* WOOD *against* LAIRD OF POWRIE.

No 467.

THERE was one Wood, as assignee to an action of spuilzie, that pursued the Laird of Powrie Ogilvie for the spoliation of certain goods. It was *answered*, *Quod non competebat actio* after the prescription of three years, conform to act of Parliament, the action not being pursued within the said space. It was *answered*, That the pursuer had intented his action before the running of the said three years. To which it was *answered*, *Quod sola citatio non interrompebat nisi lis fuisset contestata*, or judicial act of precept had been deduced, and led thereafter. *Answered*, *Quod secundum doctores et precipue Guido Papæ decis. 416. numero et decisione 488. si citatio instruat de qua re agitur, tunc interruptitur præscriptio, ut in presenti casu*, the defender was summoned, being personally apprehended, and a copy delivered to him, whereby he might be sufficiently certiorated. THE LORDS found according to the decision, That the citation and summons was sufficient, in respect the defender was personally apprehended, to stop the prescription.

*Fol. Dic. v. 2. p. 131. Colvil, MS. p. 415.*

1622. *January 26.* HERRING *contra* RAMSAY, and M'KIE *against* LAG.

No 468.

CAPTAIN HERRING having pursued George Ramsay for spuilzieing of certain goods; the defender compeared, and *alleged* the action was prescribed; for albeit that the pursuer alleged, that the prescription had no place, seeing the summons and action was intented and executed, and called *debito tempore*, within the space of three years after committing of the fact; yet the defender *duplicated*, That the prescription behoved to have place; by reason that since the intenting and wakening of the cause, there had intervned more than the space of three years, during the which nothing was done, neither by calling of the action, nor by wakening of the same, by the whole space of three years together, which rendered the matter in the like estate, as if the summons had not been raised in due time. The pursuer *answered*, That the summons being once raised in due time, the prescription ran not thereafter, albeit the cause had slept longer than three years. THE LORDS repelled the allegiance, and found the prescription run not in this cause, which was intented, and called in due time, albeit it lay over thereafter three years, seeing the defender being

Found in conformity with Wood against Powrie, *supra*, that a process once commenced does not fall in less than 40 years, unless when the time is shortened by particular statute.