

DIVISION XV.

Interruption of the Negative Prescription.

S E C T. I.

What diligence sufficient.—Effect of partial interruption.

1612. *July 2.* Sir ROBERT DOUGLAS *against* Lord HERRIES.

No 403.

THE LORDS found that a summons of removing raised within three years interrupts the prescription; notwithstanding it was alleged the said summons was passed from *pro loco et tempore*; and yet the Lord Herries could not have compelled them to have insisted upon the warning.

Kerse, MS. fol. 265.

1627. *July 25.* WILLIAM ROSS *against* PATRICK ELLIOT.

No 404.

IN an action of registration pursued by William Ross against Patrick Elliot, to hear and see a bond of 100 merks granted by the defender's father *anno* 1584 30th May, to the pursuer, registered against him as heir to his father; *excepted*, That the bond was prescribed, in respect that the summons was dated the 28th of May 1624, two days allenary before the expiration of 40 years, and the day of compearance was long after. *Replied*, That this citation was a sufficient interruption. THE LORDS found the exception relevant.

Spottiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) p. 236.

No 405.

Found that a charge of horning and denunciation are sufficient interruption of prescription, although

1629. *July 21.*

MORRIS *against* JOHNSTON.

A CONTRACT being alleged to be null, because it was alleged more than 40 years since the date thereof, and since syne no action intended thereon, and therefore that it was prescribed conform to the 28th act, Parl. James III., the allegiance was repelled because it was registered within that space, within

which space also letters of horning were execute against the party, and he denounced to the horn; which registration and horning were sustained to interrupt the said prescription, albeit the registration was only done by consent of the parties procurators, and not by any citation; and albeit no action was intended thereon, nor the party summoned within that space; for the contract registered by consent was found as good as if it had been done by citation of the party, and the horning was also found an interruption without action.

No 405.
there was no
citation be-
fore a judge.

Fol. Dic. v. 2. p. 127. Durie, p. 465.

* * * Spottiswood reports this case :

1629. July 18.—IN an action pursued by David Morris against Mr David Barclay and Christian Johnston, for improving of a contract made between the pursuer's father and the defender's father *in anno* 1586 as false and feigned; it was *excepted*, No process, because the pursuer's action was founded upon a contract made 1580, which was prescribed, there being nothing intended 40 years thereafter and more. *Replied*, That ought to be repelled, in respect the pursuer offers to prove that the prescription was lawfully interrupted by letters of horning direct upon the said contract, whereupon charges and denunciation followed. *Duplied*, No lawful interruption of prescription without a summons and citation before a judge. THE LORDS found the charge of horning and denunciation a sufficient interruption.

Spottiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) p. 236.

* * * Auchinleck reports this case :

1629. July 18.—ONE being alleged to be prescribed, because not pursued within 40 years, it was *replied*, That within the time of prescription, letters of horning were raised upon the bond, and the party charged therewith; which the LORDS sustained as a deed that stays prescription, and more notorious nor taking of a document prescribed by the act of Parliament.

Auchinleck, MS. p. 162.

1630. November 27. Lord BORTHWICK against Ld SMELTON.

REGISTRATION alone of a charge of horning does not interrupt the negative prescription. No 406.

Fol. Dic. v. 2. p. 126. Spottiswood, p. 237.

* * * This case is mentioned in *Lauder against Colmslie*, No 1. p. 10655.