

No 472. ten years. *2do*, The clause of exception doth rather concern the quality of interruption by wakening, than the time of prescription.

THE LORDS found the action prescribed in ten years, though there was no wakening till the eighth year; and that another ten years must run from that wakening.

*Harcarse, (PRESCRIPTION.) No 769. p. 218.*

1687. *February.* Colonel GRAHAM *against* LIN of Larg.

No 473.  
A man's creditor becoming rebel, and the forfeiture being gifted, interruption by citation at the rebel's instance before forfeiture altho' not renewed every seven years by the donatar, was sustained.

COLONEL GRAHAM of Claverhouse having obtained a gift of Patrick M'Dougal's forfeiture, and having pursued Fergus Lin of Larg for the sum of 4000 merks, contained in a bond granted by him to M'Dougall of French, and assigned to Patrick M'Dougall, his brother; *alleged* for the defender, That the bond was prescribed, being dated in the year 1642, and the sum payable at Whitsunday 1683. *Answered*, That the prescription was interrupted by a citation at the rebel's instance against the defender long within the years of prescription. *Answered*, That the citation cannot be sustained as an interruption, because it has not been renewed every seven years, conform to the act of Parliament concerning interruptions. *Replied*, That the act of Parliament takes no place in the case of a donatar of a forfeiture; because it is not to be supposed, that a donatar can be master of the papers or the writs and evidents belonging to the rebel, or know his rights; and as prescription cannot take place in such cases in the general, much less in that particualar case, seeing the summons of interruption at the rebel's instance against the defender was seen, and returned, and called, and a decret marked by the clerk upon the back of the summons, which, as it kept the process from sleeping, so that there would be no necessity of a wakening, albeit the decret should lie over unextracted the space of seven years, so by that same reason, it should hinder prescription, and was so found lately in the case of Innes of Lithuel against the Lord Duffus. THE LORDS repelled the allegiance proponed against the interruption produced, in regard of the answer, and sustained the interruption.

*Fol. Dic. v. 2. p. 132. Sir P. Home, MS. v. 2. No 874.*

No 474.  
The act 10th, Parl. 1669, extends to all interruptions, as well of short as of long prescriptions.

1699. *July 21.* EARL of FORFAR *against* The MARQUIS of DOUGLAS.

By contract of marriage betwixt the Earl of Angus and Lady Jean Weemys, his second Lady, the baronies of Bothwell and Wandle are provided to the heirs of that marriage, which the Earl obliges himself to be worth 10,000 merks yearly.