

## 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 *duplied*, 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.

No 468.

once summoned, he might have compelled the pursuer to have insisted by his ordinary course of process, in seeking protestation, and charging him to insist, with certification.

The like done 11th February 1637, betwixt M'Kie and L. Lag; where a spuilzie once intended *debito tempore*, albeit lying over after the citation upon the second summons, ten years together, without calling or wakening, yet the LORDS found the action did not prescribe, but sustained it as a spuilzie, to give *juramentem in litem*; for they found, once an interruption made, was sufficient to interrupt for ever; but the LORDS declared, that after probation, when the party's oath should be taken, they would tax the same as they found requisite, and reserved the modification of the quantities to themselves.

Act. ———.

Alt. *Oliphant.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 131. Durie, p. 11.*

1630. March 4.

LORD LESLIE against ———.

No 469.

Found again  
in conformity  
with Wood  
against Pow-  
rie, No 467.  
P. 11319.

A SPUIILZIE being intended, and the summons executed *debito tempore* within the prescription, viz. within three years after the committing, which was committed *in anno* 1601; and, after citation, having lain over, without continuation, calling, or wakening, until the year 1622, at which time it was transferred; and after the transferring, being wakening and called this day; and the defender *alleging*, That it was prescribed, in so far as albeit it was intended *debito tempore*, yet seeing it lay over 22 years after the intending, during which space nothing was done therein, both the parties being dead, by that long intermission it was prescribed, sicklike as if it had not been intended in due time. This allegiance was repelled, for the LORDS found, that the lying over of the cause, being once intended lawfully, made it not fall under prescription.

Clerk, *Scot.**Fol. Dic. v. 2. p. 131. Durie, p. 499.*

1666. June 28.

LORD PHILORTH against LORD FRASER.

No 470.

A PROCESS once commenced does not fall in less than 40 years, unless where the time is shortened by particular statute; and therefore, after a process of declarator was raised, which lay over, and then was taken up again, the defender's answer was not found sufficient, that he a churchman had *decennalis et triennalis possessio*, since the commencement of the process.

*Fol. Dic. v. 2. p. 130. Stair.*

\* \* This case is No 4. p. 5620, *voce* HOMOLOGATION.