No 416. no document upon the writ, it prescribes; and here is a clear document, viz. a decreet of registration. It was *answered*, That the ground of prescription is not presumed dereliction, but is, *ne dominia rerum sint incerta*; and, therefore, is introduced *in pœnam negligentium*, and in favour of those who have rights, which, if by any act that they did, or ought to know, they were quarrelled, they might remove that pretence; but a putting of a writ in the register, not being a register appointed for publication, as that of sasines and reversions, but a register for execution of sentences, no party was obliged to know the same; and if it were so letten lie over till all means of improbation should cease, it were of great detriment; neither do the practiques adduced at all quadrate; for, in the first case, there was not only decreet of registration, but executed horning; and, in the second case, a registered contract, whereof both the date and registration were 40 years before any action was found prescribed.

The Lords found the registration of the bond without any action or charge before or after, was no interruption.

Stair, v. 2. *p.* 43.

1673. *February* 11. Muir of Rowalland *against* Lawson.

No 417.
The execution of a summons, altho' it did not particularly specify the action, found to interrupt prescription. See No 402. p. 11241.

One of Rowalland's predecessors being infeft in a tenement of land in Tweeddale, which was possessed by the Earl of Morton, and by progress from him is now possessed by Lawson of Kairnmoor and others; this Rowalland's grandfather did, in the year 1630, infeft himself as heir to that predecessor, and raised reduction against the Earl of Morton upon the priority of his right. Now, this Rowalland insists in the reduction, against whom the defenders alleged prescription; and the pursuer having replied upon interruption by his summons of reduction *anno* 1630 against the Earl of Morton; it was *alleged* against the executions of the summons, that they were in schedules apart from the summons; and that they did not express the pursuer, but only bore, that the messenger passed at command of the within written letters, raised at the instance of the pursuer within designed, so that the Earl of Morton being then a man of great estate and interest, being treasurer, and the year 1630 being the last of the 13 years granted by act of Parliament for interruption of old rights, there is no doubt but many interruptions have been used against him, so that the executions of any summons of reduction against the Earl of Morton *in anno* 1638 might be made use of, and unwarrantably applied to this summons, which were neither just nor favourable, the lands having passed for competent prices through many hands, and the pursuer having never insisted since the year 1630, till of late. It was *answered* for the pursuer, That he oppones the executions in the common and ordinary style, and the possibility of applying of these executions is of no moment; but that these were the executions of this summons is evident; 1*st*, Be

cause the pursuer's grandsire being then a man of great age, and long before infeft in his estate, did serve himself heir, and infeft himself in these lands *in anno* 1630, the last year allowed for interruptions, and did raise this summons of reduction, bearing himself to be pursuer, and the Earl of Morton defender in this very cause; and immediately after the date of the summons, there are three executions against the Earl, one at Dalkeith, one at the cross of Edinburgh, another at the pier and shore of Leith, he being then out of the country; and *in anno* 1632, the pursuer's grandfather did assign the summons of interruption and executions to the pursuer's father; and that he did not insist, imports nothing, seeing he insisted within 40 years; and there is nothing more odious than prescription, or more favourable than interruption thereof, which is frequently sustained, though the process be null, and can have no other effect but interruption. No 417.

THE LORDS sustained the executions to infer interruption, the pursuer deponing that he received the executions from his father, or found them amongst his writs, with the summons, and that he knows them not to belong to any other summons.

Stair, *v.* 2. *p.* 170.

1675. *January* 9. M'INTOSH *against* FRAZER.

No 418.
Interruption of prescription sustained by citation without any judicial act thereon, see Butler against Gray, No 363. p. 11183.

ALEXANDER M'INTOSH having pursued the Laird of Strichen for payment of a sum of money, he proponed two defences, prescription and payment.—Against prescription, the pursuer replied upon interruption, whereupon litiscontestation being made, and the cause being called to be advised, the pursuer produced a summons executed for instructing the interruption, and the defender produced a discharge of the sum, granted by M'Intosh his curators. It was *objected* against the interruption, That the citation was not sufficient, unless it had been called *in judicio*, otherwise it might be easy for messengers or others, by forging citations, to make interruptions, which if called in judgment, and so made known to the party, they would have improved. It was *alleged* against the discharge, That it could not prove payment to the creditor, because it is not subscribed by him, neither could his curators lift the sum, or discharge the same, without their minor; for though tutors act for their pupils, curators act but with their minors. It was *answered*, That *curatores dantur rebus*, and so by their office they may lift the minor's rents and sums, and they are ordinarly their factors, and in a matter so ancient 40 years since, it were hard to put them to produce factories in writ; for if the matter had been recent, it would have been a good allegeance that the curators were factors, or at least holden and reputed factors, which must be presumed after so long a time, especially seeing the discharge was registered while the minor lived, and if