

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 SPUILZIE 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.