

## S E C T. II.

What evidence required of interruption.—Interruption by an apparent heir.

1637. July 26. LD. LAWERS *against* DUNBARS.

No 453.

AN only son who was nearest of kin to his father and to his mother, both now deceased, as executor to his mother, confirmed a decret for a sum of money which had been recovered by her and her husband for his interest. The confirmation was null, the subject being *in bonis* of the husband, as falling to him *jure mariti*. Yet diligence done by the son upon this title against the debtor, was found sufficient to interrupt the negative prescription of the decree, he being at the same time, as mentioned, also nearest of kin to his father.

*Fol. Dic. v. 2. p. 129. Durie.*

\*\*\* This case is No 13. p. 10719.

1752. December 7. LOCKHART of Birkhill *against* ELIZABETH MERRIE.

No 454.

Found, that to prove interruption of prescription, complete evidence is not necessary; but such as affords a presumption of interruption is sufficient.

LOCKHART of Birkhill, insisting in a process of debt against Elizabeth Merrie, relict and representative of Captain Lockhart of Kirkton, the defence was compensation upon counter-claims which the Captain had against Birkhill. It was *answered*, That these counter-claims were long ago extinguished by the negative prescription. The defender *replied* upon interruption; and, as the single question was, Whether the alleged interruption was sufficiently verified, the facts must be set forth with the evidence. It appeared by documents produced in process, that from the 1662 to the 1678, the Captain was in use to lend his credit to his friend Birkhill in several bonds to the extent of 2500 merks of principal. The Captain paid the whole of these sums as a distressed cautioner, betwixt the 1690 and 1697, and took assignations in common form, which, with the bonds, were all produced in process. The interruption condescended on was, that the Captain in the year 1712, brought a process against the present Birkhill, as representing his father the principal debtor, for payment of the above mentioned debts. The interruption was undoubtedly relevant; the difficulty lay in the evidence; for though the principal execution of the summons was produced, the summons itself was not; and it did not with certainty appear from the execution that it related to a summons for payment of the debts under consideration. But to supply this want, the following production was made,