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seven years without interruption; so, if 10 or 13 years be sufficient to the kirk, no interruption preceding, but only such as are done during these years, can be sufficient; for, if 13 years will take away the solemnest rights and writs, much more may it a citation.

Others were for the affirmative, on this ground, that, in the short prescription of three years, in spuilzies, &c. interruption once used serves for 40 years, so it must in this case; for he that once interrupts is always holden as continuing in that interruption, until it prescribe, or be otherwise past from. But it was *answered*, That it did prescribe, by possessing 13 or 30 years *in rebus ecclesiæ*, church-men seldom have or keep evidents; albeit, in other cases, interruption would only prescribe in 40 years.

Yet the plurality found, that, after interruption, no less than 40 years possession was sufficient, but reserved to the Lords the question anent the ground, in so far as dead were buried therein after probation. See PRESCRIPTION.

Stair, v. 1. *p.* 381.

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A decree of declarator of irritancy, *ob non solutum canonem*, pronounced by a Sheriff incompetent to such processes, was found homologated by a voluntary offer of obedience, after which the vassal was not allowed to reduce the decree.

1671. *February* 4. LOWRIE *against* GIBSON.

LOWRIE being superior to Gibson in a feu, pursued him before the Sheriff for annulling his feu, for not payment of the feu-duty, and obtained decreet against him; and thereafter pursued him before the Lords for mails and duties, wherein compearance being made, Gibson made an offer, that if Lowrie would free him of bygones, and pay him 1600 merks, he and his author would dispone their whole right, which being accepted by the superior, decreet was pronounced against Gibson to denude himself upon payment. Shortly thereafter, Gibson drew up a disposition, and subscribed it in the terms of the decreet, and offered it to Lowrie, who refused it, because his author had not subscribed. Thereafter Gibson suspended upon obedience, and consigned the disposition, which was never discussed; but Gibson continued in possession still from the decreet, which was in *anno* 1650. Now Gibson raises a reduction of the Sheriff's decreet of declarator annulling his feu, because the Sheriff was not a competent judge to such processes, and because Gibson had offered the feu-duty, which was refused, so that the not payment was not through his fault; and also insisted for reduction of the Lords' decreet, as built upon the Sheriff's decreet, and falling in consequence therewith. And as for any offer or consent, the assertion of a clerk could not instruct the same, unless it had been warranted by the party's subscription. It was *answered*, That Gibson having homologated the decreet by an offer of the disposition, conform thereto, which was only refused because it wanted the author's subscription, and having suspended upon obedience, he cannot now object either against the decreets or consent. It was *answered*, That so long as the decreets of the Sheriff and the Lords were stand-

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ing, Gibson might be compelled thereby to consign the said disposition; but that is only in these terms, to be given up if the Lords saw cause; and hinders not Gibson to allege why it should not be given up. And as to the offer to deliver the disposition, the instrument of the notary could not instruct the same, but only Gibson's own oath.

THE LORDS found, that albeit the consignation for the suspension would not have prejudged Gibson, yet the simple offer to deliver the disposition did so homologate the decreets and consent, that he could not quarrel the same; but they found it not proven by the instrument, without the oaths of the witnesses inserted in the instrument; and in regard that Lawrie had let the matter lie over for more than twenty years, they declared that the agreement should only take effect from this time, and that Gibson should not be countable for the bygone duties. See PROOF.

Fol. Dic. v. 1. p. 377. Stair, v. 1. p. 715.

*** Gosford reports the same case:

GIBSON having right to the lands of Meikledibeu, which were held feu of the Laird of Maxwelton, and whereupon decreet was recovered *ob non solutum canonem* against Gibson's author; thereafter, in a pursuit for mails and duties, Gibson did compear for his interest, and produced his disposition of the saids lands; and in that process there is a decreet given, which bears, with consent of parties, whereby Gibson was content to denude himself in favours of Maxwelton, and Maxwelton is decerned to pay him 16,000 merks for his right. This decreet being assigned to Lowrie of Reidcastle, who did charge Gibson, he suspended, upon this reason, that the decreet bearing a disposition of his heritage, with his own consent, it was not probable, but *scripto vel juramento*, and the assertion of a clerk was not sufficient *in re tanti momenti*, but his consent should have been subscribed by himself judicially. It was *answered* for the charger, That the decreet bearing both parties compearing personally, and with their procurators, before the Lords of Session, a decreet extracted under the clerk's hand is sufficient to prove any judicial declaration, especially in this case, where the suspender, being charged to fulfil, did compear upon the ground of the lands, and offered a disposition thereof, and thereupon took infeftments, which was a homologation of the decreet.——THE LORDS did find, that an extract under the clerk's hand was not sufficient, albeit it did bear that it was done judicially, and that it was necessary the parties themselves should have subscribed; but in respect of the homologation, bearing an offer of the disposition of land, they did sustain the same, but so that it was only probable *scripto vel juramento*, at least by the notary and witnesses oaths inserted in the instrument, the instrument itself not being sufficient.

Gosford, MS. No 331. p. 151.