

1681. *June 23.* DUNLAP *against* PORTERFIELD.

DUNLAP pursues Porterfield for payment of a debt. The defender excepted upon prescription. The pursuer replied upon interruption, and produced a process for the same debt, the execution whereof was within prescription. The defender *duplicated*, That the executions were simply null, neither bearing to be personally, nor at the party's dwelling-place; and albeit citations may serve for interruption, though the process might be excluded through irrelevancy, or some informality of the order, yet it would never be sustained with no citation, or a citation absolutely null. The pursuer *triplied*, That by the process produced, it is evident, that the same was several times called, and compearance made therein, marked by the hand of Alexander Lockhart, sub-clerk, who died before this process; so that the pursuer hath not only followed his right, but taken document thereon, according to the old act of Parliament anent prescriptions.

THE LORDS sustained the reply and triply, and found the interruption by this citation, and the compearance marked as said is sufficient.

Fol. Dic. v. 2. p. 128. Stair, v. 2. p. 882.

* * Similar decisions were pronounced, 25th November 1665; White against Horn, No 44. p. 10646. *voce* POSSESSORY JUDGMENT; and 6th July 1671; M'Rae against Lord M'Donald, No 13. p. 8338. *voce* LITIGIOUS.

1683. *November 29.* SIR PATRICK HOME *against* HOME of Linthill.

IN the action pursued by Sir Patrick Home against Home of Linthill, craving, that it might be found and declared, that Sir Patrick, as being infest in a mill, had right to affix his dam upon the end of a commonty, wherein Linthill had an interest, upon this ground, that he and his predecessors had prescribed a servitude, having been forty years in possession; and Linthill having *alleged* interruption, for proving thereof, he produced a summons of molestation and declarator, raised at the instance of Linthill's author, in a mill superior to Sir Patrick's, for demolishing Sir Patrick's mill, that it might not make the water restagnate upon the superior mill; it was *objected* by Sir Patrick, That this interruption could not be sustained, it being only raised at the instance of the heritor of the superior mill, as being infest therein, and in the multures of certain lands condescended upon in the summons; and which interruption could only import a regulation of Sir Patrick's dam, that it might not restagnate the water upon the other mill, but could not import an interruption of Sir Patrick's servitude, of affixing the end of his dam upon the commonty, there being no mention in that summons of interruption, that the pursuer thereof was infest in the com-

No 419.
Prescription interrupted by an informal citation.

No 420.
A summons found not to interrupt prescription as to grounds not particularly libelled on. See No 417. p. 11238.