

alleged to be proved, was so unwarrantable an act, that Blackhill, who did cut and throw down the dam-head, being convened before the English Judges, it was found to be a riot, and he was severely fined; and, by an express decision, the 22d June 1667, Hay of Stroway, No 9. p. 1818. the LORDS found, that, albeit a party might use a civil interruption *via juris* of a mill, or laying in of a dam-head, yet he could not stop a going mill, or demolish the dam-head *via facti*, if the mill was a going mill before, without the authority of a Judge; and as this is clear in the general, much more in this particular case, seeing, by the agreement betwixt the Laird of Wedderburn and the Laird of Aiton, in the year 1625, Aiton, Linthill's author, is obliged not to stop the going of the mill, otherways than by order of law, which excludes all interruption *via facti*; and albeit the ground on the other side of the water doth not belong to Sir Patrick in property, yet he having interest in the commonty, as well as Linthill, it is a certain rule in law, that any party having an interest in the commonty, may make any use thereof that does not prejudice the common interest; but so it is, that the affixing of the end of Sir Patrick's dam-head to the water brae on the other side, doth not prejudice the ground; and it is clear by Craig, Lib. 2. Dieges. 8. § 5. that, in flumine privato pro reparando aquæductu, sive clusam molendini sua posunt imponere ligna et lapides in fundo vicinorum, invito etiam domino, quamvis non potest pro novi molendini constructione; and it is evident, that Linthill's stopping the laying in of the dam-head was only *emulationem vicini*; and by the report, the building of this dam-head cannot make Linthill's mill restagnate; so that it is a principle in law, that what is done *in emulationem, invidiam, et injuriam*, altering ought not to be allowed, *nam maliciis hominum non est indulgendum*.—THE LORDS sustained the report; and found, that there was no restagnation; but, in respect of Linthill's interruption *via facti*, assoilzied him as to that point, anent the pursuer's affixing the lintal of his dam-head upon the other side of the water, wherein Linthill has interest either of property or commonty.

*Sir Pat. Home, v. 2. No 631.*

1685. *January 1.* COUNTESS of ROTHES *against* MARQUIS of DOUGLAS.

No 423.

IN a pursuit at the instance of the Countess of Rothes against the Marquis of Douglas, for four bolls of barley out of the lands of Abernethy parish;

The defender *alleged* prescription, in regard no such annuity had been exacted for the space of 40 years.

*Answered* for the defender; That the prescription was interrupted by process against the tenants of the lands.

No 423.

*Replied* ; These processes mention no annuity ; and they might have been raised for some other cause, even for the tenants' proper debt. Again, they are in a factor's name, and no factory produced.

THE LORDS repelled these interruptions, unless they were adminiculate to have had relation to the annuity.

*Harcarse*, (PRESCRIPTION.) No 770. p. 219.

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No 424.

1686. *February*.Mr THOMAS SKENE *against* Sir JOHN CAMPBELL.

A DEBTOR's promise to pay annualrent of his bond found to be interruption, though payment was not made within 40 years.

*Fol. Dic. v. 2. p. 128. Harcarse*, (PRESCRIPTION.) No 774. p. 220.

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1687. *June*.PITTEDIE *against* RAMORNIE.

No 425.

LANDS dispoed by a minor being apprised from the buyer, and the appriser infest, and in possession, the minor *intra quadriennium utile* revoked, and raised reduction, wherein he called the buyer only ; yet this summons of reduction was sustained as interruption *contra* the appriser.

*Harcarse*, (PRESCRIPTION.) No 777. p. 220.

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1688. *June 13*.FEUARS OF GAITMILK-MILL *against* FEUARS OF DUNFERMLINE ; *viz.* COUNTESS OF ROTHES, LADY KINGLASSIE, &c.

No 426.

In a declarator of the immunity of bear sold, and not ground from a thirlage of *grana crescentia omnium terrarum* ;

*Alleged* for the defender ; That the pursuer must prove *positive*, that, for the space of 40 years, &c. regularly and openly, the bear was sold without any multure exacted, and not barely *negative*, that the multure of any bear sold was not exacted, seeing the thirlage was constituted *scripto* ; although such a negative probation were sufficient to hinder or take off a constitution of thirlage by prescription ; *2do*, The possession of any species of grain constitute *scripto* ought to preserve and interrupt.

THE LORDS sustained the first allegiance for the defender, and probation as to the immunity being only negative, they assoilzied from the declarator, and