

real diligence, seeing, so long as the disposition remained in the naked terms of a personal right, the pursuer was not obliged to know if there was any such right made; and so was *in bona fide* not to pursue a reduction thereof. THE LORDS found, That the leading of a comprising upon a bond which was the ground of the inhibition did not interrupt the prescription of the inhibition, seeing that diligence could not be ascribed to the inhibition; but found that the prescription did not run against the inhibition, but from the date of the comprising used upon the bond or disposition craved to be reduced; in respect the party at whose instance the inhibition was served could not know of the bond, until real diligence was done thereupon to affect the lands.

No 367.

Sir P. Home, MS. v. I. No 259.

1687. July —. Earl of LAUDERDALE *against* VASSALS of Dundee.

No 368.

IN a question of recognition, *alleged* for the Vassals, That one of the base infeftments being granted 40 years before the other, the process of recognition was prescribed, *quoad* that subject, and so it could not concur to infer recognition; *answered*, The first base infeftment did not comprehend the major part of the ward tenement; and the action of recognition could not begin to prescribe until recognition was incurred. THE LORDS repelled the defence, in respect of the answer.

Fol. Dic. v. 2. p. 124. Harcarse.

* * * This case is No 63. p. 6485. *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1688. June 28.

WILKIE *against* SCOT.

No 369.

ONE having disposed a tenement, with a servitude *altius non tollendi*, and the heritor of the said tenement having offered to build it higher, he was interrupted. *Alleged* for the builder, That the servitude was prescribed *non utendo* for the space of 40 years. *Answered*, Negative servitudes do not prescribe, but after the contrary positive acts are done, just as warrandice; till then, the parties being *non valentes agere. 2do*, Predial servitudes are constituted by personal rights, and need not be included in infeftments. *Replied*, It would be an invincible inconvenience, if predial servitudes should not be notified, especially negative servitudes; for positive servitudes, with possession, is a sufficient notification, whether they be included in the infeftment or not.

THE LORDS found, The servitude did not prescribe from the date of the writ, but from the time the party acted contrary to the servitude, by building, or obtaining a declarator of immunity from the servitude.

Harcarse, (PRESCRIPTION) No 780. p. 220.