

withstanding of Justinian's constitution in the law, quoted; as it establishes a principle, the reason whereof may be justly doubted. The creditor, in that case, might have got a privilege of declaring which of the debts due to him he meant to insist for: But that an action, *e. g.* for payment of a hundred pounds, should serve to interrupt the prescription as to five different claims for a hundred each, does not appear to have a very solid foundation. Besides, Peresius, in his Commentary upon that title, observes, that the law concerns a particular case. In the *next* place, There is nothing solid in the argument, that the general disposition is in effect libelled upon in this process; as it does not appear from the testament, that the disposition contained a general assignation of all debts due to Roe, or that particularly comprehended the bond in question. And, if it was impossible to discover that from the testament, How can it be maintained that this libel proceeded upon the disposition, or was a document taken thereon, or upon a debt that fell under the conveyance thereof?

THE LORDS found, that the bond was not prescribed.

But, upon petition and answers, "they sustained the defence of prescription,"

*C. Home, No 4. p. 12.*

No 438.

1747. February 12.

Captain JOHN RUTHERFORD *against* Sir JAMES CAMPBELL of Aberukle.

LETTERS craving payment, written to the defender within the three years, were found not to interrupt the prescription of an account, the words of the act being express, "that such action cannot be pursued after three years, unless proved by writ or oath of party." See APPENDIX.

*Fol. Dic. v. 2. p. 128.*

No 439.

1739. January 16.

REID *against* KER.

AN adjudication against Patrick Livingstone was not sustained, even to the effect of interruption of the negative prescription of the debt, in regard the bill of adjudication upon which the same proceeded was against John Livingstone.

*Fol. Dic. v. 4. p. 114. Kilkerran, (PRESCRIPTION.) No 1. p. 414.*

No 440.

1739. November 30.

M'DOUGAL *against* M'DOUGAL.

A SUMMONS executed interrupts prescription, though it never be called, for it is the citation itself that interrupts: So the laws suppose that appoint citations

No 441.