

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.

No 441. for interruption to be registered. But it was here found, that a citation on a blank summons, which, till of late was in use, was no interruption.

Fol. Dic. v. 4. p. 112. Kilkeran, (PRESCRIPTION.) No 4. p. 41 5.

1743. November 26. GARDEN *against* RIGG.

No 442.
Interruption
by partial
payments or
general sub-
mission.

MR THOMAS RIGG being pursued by Garden of Troup, as assignee by Mr John Arrat, for two debts, the one constituted by bond bearing annualrent, the other by a missive not bearing annualrent, both granted in the year 1697; the defence was prescription. The pursuer *replied* upon interruption, *1mo*, By partial receipts, granted to the defender by Arrat, the original creditor, which he insisted the defender should exhibit, and which he accordingly did; but as they were all indefinite, bearing to account, or in part of the money he rests me, bearing date some in 1698, some in 1704, some since the year 1725, the defender, at exhibiting, protested that he applied them in payment of the sum contained in the missive; *2do*, By a general submission between Rigg and Arrat, in 1728, of all claggs, claims, or controversies, between them, which, though the subscriptions of parties and witnesses were now lacerated, was said to appear to have been duly executed from a letter extant, subscribed by the arbiters, relative thereto, and a memorial from Mr Rigg to the arbiters.

THE LORDS "Sustained the defence of prescription of the bond; but sustained the interruption of the prescription of the missive, in respect the defender had applied his indefinite payment to that debt; and repelled the interruption founded on the submission."

The reason why partial payments interrupt prescription of the debt, is, that the acceptance of a receipt, in part payment of a particular debt, implies an acknowledgment that such debt is a subsisting debt at the time; but an indefinite receipt of money, applying to no particular debt, is no acknowledgment of any particular debt; and, therefore, would not have been sustained as an interruption of either the one or the other of the debts pursued for, but for the defender's acknowledgment. In like manner, a general submission is no interruption of the prescription of any claim; and it was even doubted, if a special submission now cancelled would be an interruption.

Fol. Dic. v. 4. p. 113. Kilkerran, (PRESCRIPTION.) No 11. p. 420.