

ducta. The defender *alleged* no certification, because the pursuer's title being as heir to his predecessor, the same was posterior to his summons, and so the summons is null *sine titulo*. It was *answered*, That the Lords do frequently sustain process at the instance of heirs, though they be not actually entered the time of the citation; for, having in them the foundation of a right, though not perfected by the solemnities, the same, when done, is always drawn back to the date of the summons; albeit the titles of singular successors by assignation or disposition will not be sustained, if after the summons, having no anterior ground of right. It was *replied*, That though the Lords sometimes allows the title of heirs, though posterior to the summons, yet that is when no party hath interest; but here the sustaining, or not sustaining of this summons, carries the whole right of the lands in question; for the defender being in possession more than 40 years, he is *tutus præscriptione*, unless it be interrupted by this summons. It was *duplied*, That prescription is most odious, and therefore interruption is sustained upon summonses, albeit no decree can follow upon these summonses through any defect of the titles or formalities, because the very citation is *indicatio animi*, that the party intends to interrupt the prescription; and here the citation is not only within the prescription, but the pursuer's service as heir.

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rent heir,
though executed before
his service.

THE LORDS sustained the summons both for prescription, and sustained process in the reduction and improbation. See QUOD AB INITIO VITIOSUM.

Fol. Dic. v. 2. p. 130. Stair, v. 2. p. 108.

1677. December 7. HENDERSON *against* ARNOT.
1678. January 11. BALMERINO *against* COCKBURN.

No 460.

PARTIAL or clandestine abstraction not sustained as interruption, but going to other mills with the whole grist for one or more years together.

Fol. Dic. v. 2. p. 130. Stair.

*** These cases are No 126. p. 10867. and No 127. p. 10870.

1678. January 25. DUKE of LAUDERDALE *against* EARL of TWEEDALE.

No 461.

INHIBITION at a parish church door sufficient to interrupt the positive prescription of teinds.

Fol. Dic. v. 2. p. 130. Stair.

*** This case is No 374. p. 11193.