

by persons having right to grant the servitude, or by prescription. Replied, *In-ædificatum cedit solo*, upon a special ground of law, which cannot be extended in this case to what relates to other men's lands. 2. Prescription was interrupted by a declarator for demolishing the pursuer's dam, raised at the instance of the defender's authors, who were heritors of the superior mill, and of the land in which the dam-head was craved to be fixed. Duplied, The citation not being renewed within seven years, it is prescribed by the late Act of Parliament *quoad* the effect of interruption. 2. The declarator did not conclude that the dam should be simply demolished, but to the effect it might not occasion the superior mill to stand a-back-water; and the pursuer is content to be so regulated. Triplied, The late Act of Parliament concerns only interruptions by citation posterior thereto, and not interruption by citation anterior to the act; for, had such an extension been, it would have been expressed, as was done in the preceding Act about arrestments; especially considering, that, by the former law, there was a *jus quæsitum* to the party. And laws are not always to be extended upon parity of reason; nor did the Lords of Session find a year's duty due to a superior by an adjudger, though the Act of Parliament subjected apprisers to such a duty, and such an extension of the law had been rational. 2. Albeit the declarator mention expressly, in the conclusion, to be free of the inconvenience of standing a-back-water, yet it imports a reluctancy; and no acquiescence ought to be sufficient to interrupt as to all other effects: besides, interruption being favourable for maintaining of rights, and taking off negligence, any indication should suffice. The Lords found, That citations before the late Act of Parliament needed not to be renewed within seven years; but that the declarator was not a simple interruption, but only to the effect that the defender's superior mill might not stand a-back-water.

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1684. *March.* MR DAVID HUME *against* HUME of CROSSRIG.

A COMPRISER having called an apparent heir in a declarator of expiring of the reversion, the defender alleged, That the apprising was satisfied by a sale of part of the lands. Answered for the pursuer, That the defender had no interest to propone such an allegiance, without being served heir or infest. Replied for the defender, That he, being called as a defender, and not pursuing, had good interest to allege that the pursuer's right was extinct and satisfied. The Lords sustained the reply.

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1684. *March.* MR THOMAS RIGG *against* SIR WILLIAM PRIMROSE.

IN a competition betwixt an assignee to a debt due by the Lord Roxburgh to the Laird of Alva, and one who had arrested the same;—Alleged for the assignee, That he had done diligence against Roxburgh's heir; whereas the arrester had been *in mora*, and but lately raised his summons of forthcoming. An-

swered for the arrester, That he having arrested before the assignation, and been in ordinary diligence, the common debtor could not disappoint his arrestment, which was *nexus realis*, by any voluntary assignation. Replied for the assignee, The arrestment is null, in so far as the copy bears That the arrestment was used at the within designed Sir William Primrose's instance, for a debt due to the within designed Sir Charles Erskine; so that the designation is not full, and the execution is but a loose paper, not indorsed upon the letters. And, as the Act of Parliament 1672, cap. 6, requires the parties in summons to be fully designed, otherwise that the citation shall be null; this, *a pari*, should be observed in arrestments. 2. Though the copy bears to be stamped, there is no vestige of the stamp. 3. The debtor in whose hands the arrestment was laid on, being dead, the effect thereof ceased, as in inhibitions where the inhibited party dies. Duplied for the arrester, The Act of Parliament 1672 concerns only the execution of summonses: besides, *Sir William Primrose* and *Sir Charles Erskine* is a kind of designation more certain than the general designation of *Writer in Edinburgh*;—that would be sufficient though there were many other persons of that name and employment. 2. The copy bears the stamp to have been affixed, which must be presumed true till the contrary be proven. Though the Act of Parliament required stamping, when writing was not much in use, it is not customary to use any wax; and frequently the paper is not so much as laid down, stamping being considered but as a mere formality. 3. Whatever might be prevented [pretended] for the extinction of the arrestment, if the heir had paid, not knowing of the arrestment laid in his father's hand, that cannot hold in this case, where the debt continues unpaid. The Lords found, that the Act of Parliament 1672 did not concern arrestments; and that arrestment died with the debtor in whose hand it was made, as inhibition does. But this part of the interlocutor was stopped, in order to a farther hearing the next session; and the Lords delayed to give answer to the objection about the stamping. *Vide* No. 125, [Campbell against Clark, July 1688.]

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1684. *March.* SIR ALEXANDER FALCONER *against* SIR DAVID CARNEGIE of PITTARROW.

It was brought to interlocutor, but not determined, that an arrestment was null, because the execution expressed not that a copy was delivered either personally, or at the party's dwelling-house; but only that a copy was delivered. And, though executions are not registrate, such a solemnity ought not to be dispensed with more than in citations, which require not registration; and such omissions would render the improving of executions more difficult.

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1684. *March.* WILLIAM GRAY *against* The RELICT of BAILIE DEANS.

In a pursuit at the instance of an assignee, it was alleged for the defender,