No 180. prescription would in law and reason have excluded; and because thereafter the pursuer replied upon an interruption lawfully done *debito tempore*, therefore the reply was admitted.

Act. *Nicolson & M'Gill.* Alt. *Stuart & Mowat.* Clerk, *Hay.*

Durie, p. 730.

No 181.
The Lords sustained the defence of prescription of an apprising, notwithstanding the personal action upon the grounds of the comprising was not prescribed.

1705. *February* 2. WILSON *against* HELEN INNES of Auchlincart.

WILSON of Finreach having right by progress to an apprising against the lands of Auchlincart, led in the year 1636, pursues a reduction and improbation against the heiress of Auchlincart.

The defender *alleged*; She was not bound to produce her writs, because the apprising, the title of the pursuer's process, was prescribed, being led in the year 1636.

It was *answered*; Diligence was done on the bond which was the ground of that apprising, whereupon the LORDS have found that the prescription is interrupted; and it is certain that diligence against a cautioner interrupts prescription against the principal and cautioner; much more in this case when diligence is done against the defender's predecessor in the lands libelled.

It was *replied;* There is a great difference betwixt prescription in real and in personal actions; a document taken upon the debts interrupts prescription in personal actions as to all the obligants and their heirs; but, in real actions, if no prosecution be used for 40 years, and the lands affected be possessed by virtue of other real rights and titles by that space, without interruption, all actions for prosecuting such real rights are prescribed, otherwise singular successors and purchasers could never be secured; and the like has been found in the case of an inhibition, 1st February 1684, Brown of Colstoun *contra* Hepburn of Berford, Div. 15. *h. t.*

"THE LORDS sustained the defence of prescription of the apprising, notwithstanding the personal action upon the grounds of the apprising was not prescribed."

It was further *alleged*; Prescription was interrupted by a former reduction and improbation in the year 1662, which was not only raised and executed, but called, and a debate and interlocutor in that process.

It was *answered*; 1*mo*, That process was cast; and the LORDS found, No process, in respect the pursuer was not infeft. 2*do*, The process was not renewed every seven years, conform to the act of Parliament 1685. 3*tio*, Prescription since that interruption.

It was *replied*; 1*mo*, Though the LORDS found no process without infeftment, yet the interpellation was sufficient to interrupt, and the process could have been carried on by expeding an infeftment. 2*do*, The acts 1669 and 1685, re-

qniring interruptions to be renewed, relate only to the case of citations; but where processes are further prosecuted to compearance and judicial acts, it is not necessary to renew the diligence. 3*tio*, Minority since that process. No 181.

"THE LORDS found the process did sufficiently interrupt, without necessity to be renewed."

Fol. Dic. v. 2. p. 113. Dalrymple, No 58. p. 73.

1714. *July* 8. DUKE of GORDON *against* LAUCHLAN M'INTOSH of that Ilk.

No 182.
The title of prescription must be in its nature exclusive.

THE Earl of Huntly having anciently disponed to the Laird of M'Intosh's predecessors the lands of Dunachtoun and others, to be held of the disponer by ward and relief, in the year 1635 William M'Intosh, while the Earl was abroad, took precepts furth of the Chancery, and by running the same, of course obtained himself to be infeft holding of the Crown *supplendo vicem*. During the civil wars of Scotland the estate of Huntly came in the person of the Marquis of Argyle, who being forfeited in May 1661, the superiority of the said lands of Dunachtoun and others fell to the Crown; and in October thereafter Lauchlan M'Intosh was retoured and infeft as heir to the said William in the said lands holden of the Crown. In April 1662 the King conferred the Marquis of Argyle's forfeiture upon the Duke of Gordon, in so far as concerned his own paternal estate of Huntly, whereupon his Grace was infeft, as also he was infeft in the said lands upon a new grant in the 1685, with a *novodamus*, upon his own resignation. The Duke, and the Marquis of Huntly his eldest son, commenced a reduction and improbation against Lauchlan M'Intosh of that Ilk, of his rights to the saids lands of Dunachtoun and others. After the terms were run, M'Intosh produced the said retour in the year 1661, whereby his father was served, holding of the Crown, with infeftment thereon, by virtue whereof he had continued in the peaceable possession till his death in the year 1704, and the defender since that time: Whereupon the defender *alleged*, He had prescribed a right to hold of the Crown, and had produced sufficiently to exclude the pursuer.

Answered for the pursuers; The said title and possession could not found prescription; because, 1*mo*, At the time of the retour 1661, the defender's lands held of the Crown, by virtue of the Marquis of Argyle's forfeiture, and the King, who then entered the vassal, afterwards gifted the superiority to the pursuer; whereby possession upon that retour and sasine is so far from founding a prescription against the pursuer, that it must be reckoned his possession, and in a competition with any third party would make up prescription in his favour: As if a superior should, after entering his vassal, dispone his superiority to another, no doubt, though that vassal should possess 60 years by virtue of that sasine held of the other superior, his possession would accrue to him who acquired the right of superiority, and be reckoned as if the infeftment had been from