No 474. the interlocutor has gone too far in finding them proved, seeing the charter and sasine are but dropt in lately, and were never produced *in modum probationis*; and though they were argued upon as lying in process, yet that was only hypothetically, *esto* they were there, yet they did not infer the conclusion drawn from them, and therefore the most that the Marquis can demand, is an act to prove these deeds of acceptance. *Answered*, The Earl's mother's contract could never be a title of possession, it not being made a real right, but standing *in nudis terminis* of a personal obligement. And as to his dividing the disposition, that contradicts all the principles of law; for he cannot approbate a writ in part, and repudiate the same writ *quoad* another part of it. To the *second*, it is wondered, how the Earl comes to deny what he never controverted in the whole debate, his being infeft, and in possession, since ever his minority. The Lords adhered to the interlocutor *quoad* the relevancy; but as to the writs produced for proving the same, they continued the advising till June next. The Earl of Forfar protested for remedy of law to the Parliament.

*Fountainhall, v. 2. p. 63. & 150.*

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1704. *February* 17. Johnston *against* Kennedy.

No 475.

Interruption by executing an inhibibtion upon the ground of debt, falls not under act 10th, Parl. 1669.

*Fol. Dic. v. 2. p. 131. Fountainhall.*

*** This case is No 429. p. 11259.

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1705. *February* 2. Wilson *against* Innes of Auchluncart.

No 476.

The acts 1669 and 1685, requiring interruptions to be renewed, relate only to the case of citations; but where processes are further prosecuted to compearance and judicial acts, the same will make a sufficient interruption for 40 years, without necessity of being renewed.

*Fol. Dic. v. 2. p. 132. Dalrymple.*

*** This case is No 181. p. 10974.

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1706. *January* 23.
Earl of Sutherland *against* Earls of Crawford, Errol, and Marischal.

No 477.

In a declarator of precedency betwixt two Peers, the one founding on prescription, and the other opponing interruption by a citation; the Lords found, that

the citation, though only for the first diet, was sufficient for an interruption; but found the said citation and summons fallen and extinct, because not renewed within seven years after the date of act 15th, Parl. 1685, which they found was not to be accounted from the date of its publication, and proclamation over the cross of Edinburgh, as the act 128th, Parl. 1581, appoints; because this new act derogates from it, by declaring, that with respect to interruptions, the seven years shall commence from the date of the act. No 477.

*Fol. Dic. v. 2. p. 131. Fountainhall. Forbes.*

*** This case is No 464. p. 11295.

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1726. *January* 14. GRAY *against* MURRAY. No 478.

THE price being arrested in a purchaser's hand, he deponed in the forthcoming, that he was debtor in a certain sum as the price of the lands, payable the first term after purging of incumbrances. When the incumbrances were purged, which was many years thereafter, the arrester raised a summons of wakening of his forthcoming, and insisted to have decreet. The condition in the defender's oath being now purified, the defence was, that the action upon the arrestment was prescribed. *Answered*, That till incumbrances were purged the arrester was not *valens agere*. *Replied*, The law has said, 'That all actions 'on arrestments shall prescribe, unless wakened every five years;' therefore, how fruitless soever the wakening might otherwise be, it was by the disposition of law requisite, in order to keep the arrestment alive. THE LORDS sustained the defence of prescription. *See* APPENDIX.

*Fol. Dic. v. 2. p. 131.*

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1761. *July* 30.
JAMES and ALLAN CAMERONS *against* ALLAN MACDONALD of Moror.

No 479.
A citation for the purpose of interrupting prescription expires in seven years; but even an informal execution of a summons within the seven years, was held a suffi-

ALLAN MACDONALD of Moror, predecessor of the defender, became debtor by bond, dated 28th March 1702, in the sum of 409 merks, to John Cameron, payable at the term of Martinmas thereafter, with annualrent from the term of payment.

John Cameron, in order to obtain payment, and interrupt prescription, raised a summons upon the passive titles against the defender, which was executed against him personally upon the 11th March 1742, about eight months before the 40 years were expired. This summons having been allowed to run out, without being judicially called, the pursuers, as assignees by John Cameron, raised and executed a new summons against the defender upon the 6th July