No 435. sent case weakened by that of Kennoway *contra* Crawfurd (mentioned also above), seeing there only the proof of the reason of reduction was found prescribed.

Duplied for the defenders; The pursuer is not in the case of a blank summons for interruption, where it is optional for him to libel what he pleased, provided he duly waken the same; and even a blank summons of reduction could not interrupt prescription of other grounds of reduction than those evident at least from the title of the summons; 14th July 1669, E. Marshall *contra* Lieth, No 8. p. 10323. Though an action is consequential and dependant upon another interruption of prescription, the latter preserves the former; as a reduction and improbation of a right which tends to avoid it would save the right to pursue a declarator of extinction, which is one of the ways of avoiding it. But then an action of extinction by payment doth noways preserve a reduction and improbation upon initial nullities, which seem past from by the other. My Lord Stair's general expression, that "prescription is interrupted by the dependence of any action whereupon the right may be taken away," must be understood of taking away in the way of that action. For reduction *ex capite inhibitionis* would not interrupt as to a reduction raised after the years of prescription upon the act of Parliament 1621. The pursuers other citations are wide from the case. For though insisting in a principal cause interrupt prescription of an accessory, what hath that to do with the present question? If one action be saved in another heterogeneous action, that hath no influence upon it, viz. an action *ex natura negotii*, by an action upon the statute appointing the solemnities of real rights. So one part of a contract of marriage was voided by prescription, while the other part was preserved by interruption.

The Lords sustained the defence of prescription as to all other grounds of reduction and nullities, except those particularly libelled in the former process of count and reckoning at the pursuers' instance, and the reason of falsehood.

Fol. Dic. v. 2. p. 127. Forbes, MS. p. 21.

*** Similar decisions were pronounced, 11th February 1681, Kennoway against Crawford, No 9. p. 5170., *voce* Grounds and Warrants, and 14th July 1669, Forbes against Earl Marshall, No 8. p. 10323., *voce* Personal and Transmissible.

1717. *December* 11. Dr Wright *against* Richard Wright of Kersie.

No 436. Registration of a bond, and letters of horning there-

Doctor Wright pursues Richard Wright for payment of a sum contained in his father's holograph bond, dated in February 1685.

The defender having *alleged* prescription, it was *answered*; The prescription

No 436.
on, with a suspension by the debtor, were not found to interrupt the prescription of the bond, unless a charge had been given.

was interrupted by registrating the bond, and raising horning upon it, and whereof there was a suspension raised in February 1688.

It was *answered*; None of these documents were sufficient to interrupt, seeing there was no charge of horning given; for the registrating of a bond, or raising letters of horning, were never reckoned deeds of interruption, unless executed by the charge; 2*do*, Neither can a suspension be reckoned an interruption; because raising of a suspension is a deed of the debtor, not of the creditor; whereas all interruptions are only by the deed of the creditor. The 28th act, Parl. 5. James III. provides, that all obligations prescribed, if the party to whom they are made follow not the same within 40 years, and take document thereupon; and the 9th act, Parl. 1669, statutes, that holograph bonds, not being pursued for within 20 years, shall prescribe in all time coming.

It was *replied*; That a charge was given in this case, is sufficiently evident; because there is a note upon the back of the horning by the messenger, bearing that an execution should be made out, bearing date the next day after the letters of horning; and the suspension narrates a charge to have been given; which documents do sufficiently presume that a charge was really given.

It was *duplied*; The messenger's note mentions not the witnesses, nor is it signed; 2*do*, The common style of suspensions bears a charge to be given, tho' really there be none.

"THE LORDS did not find that the suspension was a sufficient interruption; but found that the documents produced were sufficient to presume that a charge was given upon the letters of horning; and therefore repelled the prescription."

Thereafter the defender in a reclaiming bill represented, that the note on the back of the letters of horning was not writ with the messenger's hands, and thereby could make no faith, nor afford any document that a charge was really given, whereby there remained only the registration of the bond, letters of horning and arrestment, which, without further document that a charge was given, could not interrupt.

"THE LORDS found the letters of horning and suspension were not sufficient to interrupt, without a lawful charge given."

Fol. Dic. v. 2. p. 127. Dalrymple, No 177. p. 243.

1730. *July.* EARL of MARCHMONT *against* EARL of HOME.

No 437.

A REDUCTION and improbation being insisted in in common form, to ascertain the pursuer's property to certain lands, it came out in the course of the process, that he was only superior, and that the defender was his feu-vassal. THE LORDS found the reduction and improbation a sufficient interruption of the negative prescription of the feu-duties, for *majori inest minus*, and a claim for the whole rents must be an interruption *quoad* any part. See APPENDIX.

Fol. Dic. v. 2. p. 127.