

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. -Fountainball. Forbes.

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

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.

1761. July 30.

JAMES and ALLAN CAMERONS against ALLAN MACDONALD of MOROR.

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 annual rent 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

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-