which space also letters of horning were execute against the party, and he denounced to the horn; which registration and horning were sustained to interrupt the said prescription, albeit the registration was only done by consent of the parties procurators, and not by any citation; and albeit no action was intented thereon, nor the party summoned within that space; for the contract registered by consent was found as good as if it had been done by citation of the party, and the horning was also found an interruption without action. No 405. there was no citation before a judge.

Fol. Dic. v. 2. p. 127. Durie, p. 465.

*** Spottiswood reports this case:

1629. *July* 18.—IN an action pursued by David Morris against Mr David Barclay and Christian Johnston, for improving of a contract made between the pursuer's father and the defender's father *in anno* 1586 as false and feigned; it was *excepted*, No process, because the pursuer's action was founded upon a contract made 1580, which was prescribed, there being nothing intented 40 years thereafter and more. *Replied*, That ought to be repelled, in respect the pursuer offers to prove that the prescription was lawfully interrupted by letters of horning direct upon the said contract, whereupon charges and denunciation followed. *Duplied*, No lawful interruption of prescription without a summons and citation before a judge. THE LORDS found the charge of horning and denunciation a sufficient interruption.

Spottiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) *p.* 236.

*** Auchinleck reports this case:

1629. *July* 18.—ONE being alleged to be prescribed, because not pursued within 40 years, it was *replied*, That within the time of prescription, letters of horning were raised upon the bond, and the party charged therewith; which the LORDS sustained as a deed that stays prescription, and more notorious nor taking of a document prescribed by the act of Parliament.

Auchinleck, MS. p. 162.

1630. *November* 27. Lord BORTHWICK *against* Ld SMEITON.

REGISTRATION alone of a charge of horning does not interrupt the negative prescription. No 406.

Fol. Dic. v. 2. p. 126. *Spottiswood, p.* 237.

*** This case is mentioned in Lauder against Colmslie, No 1. p. 10655.

1630. *November* 27. Cairncross *against* Laird Loudon.

No 407.

Cairncross of Cunoshie pursues Laird Loudon for a certain sum contained in a contract of marriage registered more than 40 years ago, which the Lords found to be prescribed, notwithstanding of the registration thereof.

Auchinleck, MS. p. 163.

1635. *June* 26. L. of Wauchton *against* Hume of Ford.

No 408.
In a thirlage of *omnia grana crescentia* established by writ, it was found that the defender having grinded a part of his corns at the mill to which he was thirled, this was sufficient to sustain the astriction for the whole, though there was a desuetude for the rest above the space of 40 years.

In an action for abstracting of thirle-multures, the ground whereof was a charter granted by the umquhile Lord Holyroodhouse to umquhile William Lermonth of Hill, whereby he thirled his lands of Ford and others particularly therein designed, to the said William Lermonth's mill of Linton, and also all the corns in-brought by the possessors of the said lands which should happen to be grinded by them; this was the tenor of the astriction, the right whereof being come in the Laird Wauchton's person, and he pursuing therefor, and the defenders compearing to defend, it was found by the Lords that the astriction, albeit of the tenor foresaid, whereby the lands were thirled to the mill, albeit not bearing omnia grana crescentia in dictis terris, to be thirled; and albeit also bearing in the subsequent clause, (viz. and sicklike the corns in-brought which should happen to be ground there) did extend to oblige the tenants and possessors of the lands to pay the multures acclaimed for the whole corns which should grow upon the said lands, as well for the corns that should be ground at other mills than the mill of the astriction libelled, as for the whole other corns growing thereon which should be ground any where; and found, that the said subjoined clause, viz. anent the corns which should happen to be ground, did extend only to the corns in-brought by the tenants, and not to the corns growing upon the lands. And whereas the defender *alleged*, That the astriction did extend only to the corns growing upon the lands for so much thereof as should happen to be ground at any other mill, according to the words and meaning of the said astriction, as said is, and no further, ought to be enlarged to all the corns growing, which should not happen to be ground, as said is, at no other mill; in respect he *alleged* that it was so expressed in the writ and thirlage, being in itself odious and not favourable, it should rather be retrenched than enlarged; for, albeit by the custom of this realm, parties by express paction may thirle all their corns growing, *quo casu* such thirlage being so particularly and *specifice* convened upon, the same may have effect; but where the paction does not *specifice* comprehend the same, it ought not to be extended; for it were against equity and reason, that multures should be kept for corns not ground, *nisi sit ita conventum*; likeas of the common law, all these astrictions are instituted and allowed, only that vassals and tenants should come to their over lord's and master's