

No 441. for interruption to be registered. But it was here found, that a citation on a blank summons, which, till of late was in use, was no interruption.

*Fol. Dic. v. 4. p. 112. Kilkeran, (PRESCRIPTION.) No 4. p. 41 5.*

1743. November 26. GARDEN *against* RIGG.

No 442.  
Interruption  
by partial  
payments or  
general sub-  
mission.

MR THOMAS RIGG being pursued by Garden of Troup, as assignee by Mr John Arrat, for two debts, the one constituted by bond bearing annualrent, the other by a missive not bearing annualrent, both granted in the year 1697; the defence was prescription. The pursuer *replied* upon interruption, *1mo*, By partial receipts, granted to the defender by Arrat, the original creditor, which he insisted the defender should exhibit, and which he accordingly did; but as they were all indefinite, bearing to account, or in part of the money he rests me, bearing date some in 1698, some in 1704, some since the year 1725, the defender, at exhibiting, protested that he applied them in payment of the sum contained in the missive; *2do*, By a general submission between Rigg and Arrat, in 1728, of all claggs, claims, or controversies, between them, which, though the subscriptions of parties and witnesses were now lacerated, was said to appear to have been duly executed from a letter extant, subscribed by the arbiters, relative thereto, and a memorial from Mr Rigg to the arbiters.

THE LORDS "Sustained the defence of prescription of the bond; but sustained the interruption of the prescription of the missive, in respect the defender had applied his indefinite payment to that debt; and repelled the interruption founded on the submission."

The reason why partial payments interrupt prescription of the debt, is, that the acceptance of a receipt, in part payment of a particular debt, implies an acknowledgment that such debt is a subsisting debt at the time; but an indefinite receipt of money, applying to no particular debt, is no acknowledgment of any particular debt; and, therefore, would not have been sustained as an interruption of either the one or the other of the debts pursued for, but for the defender's acknowledgment. In like manner, a general submission is no interruption of the prescription of any claim; and it was even doubted, if a special submission now cancelled would be an interruption.

*Fol. Dic. v. 4. p. 113. Kilkerran, (PRESCRIPTION.) No 11. p. 420.*