

No 309.  
sidered as  
*tempus inutile*,  
and to be  
made up by  
so long of ses-  
sion, without  
reckoning the  
vacation.

space of adjournment should not be reckoned in annual prescriptions, which argues plainly, that the said individual space of time should only be deducted, without any alteration of the nature of these annual prescriptions from a *tempus continuum* to a *tempus utile*.

THE LORDS repelled the defender's allegiance, and found that the cause is not sleeping.

*Fol. Dic. v. 2. p. 202. Forbes, p. 188.*

1709. January 7.

Mr ROBERT WHITE of Bennoch, Advocate, *against* Captain JAMES OSWALD of Dunnykeir.

No 310.

MR ROBERT WHITE of Bennoch, advocate, pursues Captain James Oswald of Dunnykeir for the price of a house and some acres. *Alleged*, He could not pay till he received a full progress of writs. THE LORDS decerned him in the balance of the price, a sufficient progress being given. This is suffered to lie over twenty months, and then Bennoch craves his oath, that if he produce the writs given him, it will appear to be a forty years progress. *Answered*, The process must be wakened, having slept more than year and day. *Replied*, There is a decret in the cause, and that can never fall asleep. *Duplied*, The meaning of that brocard is, that a decret once pronounced may be extracted *quovis tempore*, even after year and day, without either wakening or transferring; but if it be not a final decret ending the whole cause, but something yet remaining to be done, as here a progress was to be made up, that slept like any other process, it being upon the matter only an interlocutor. And the LORDS found so, and that Bennoch behaved in form to waken it.

*Fol. Dic. v. 2. p. 202. Fountainhall, v. 1. p. 478.*

1710. February 2.

Earl of LAUDERDALE *against* My Lord YESTER and GEORGE SETON of Barns.

No 311.

Instance  
where a pro-  
cess was found  
to be sleep-  
ing as to one  
defender,  
while going  
on as to ano-  
ther.

THE Earl of Lauderdale having raised a summons against the Lord Yester and Seton of Barns, concluding against my Lord Yester as heir of line to the Duke of Lauderdale, that the pursuer, as heir-male to the Duke his uncle, has good and undoubted right to an apprising led against the estate of Dumfermline, and also that the apprising is affectable for his relief of the Duke's debts; and concluding against Barns, as representing Charles Earl of Dumfermline, that he ought to be personally liable for the sums contained in the apprising: