

performed ; so that, according to this computation, instead of one year and a half's fee, there will be two and a half due. No 307.

*2do*, It is acknowledged by the defender, that Archibald Duke of Argyle died in October 1703 ; of course, the year after that, as being the *annus deliberandi* indulged by law to the defender, to consider whether he would enter heir to his father or not, cannot enter *in computo* of the three years ; because, during that year, he could not be pursued *cum effectu*, as was found 16th July 1708, Thomson, No 295. p. 11093. Setting then aside this year, the pursuer is entitled to three years and a half fees ; so that the remaining dispute is *de minimis, de quibus non curat prætor*.

THE LORDS found the process did only interrupt the prescription, as to what fees fell due within three years of the commencement of the process ; and found the prescription did run during the *annus deliberandi*.

*C. Home, No 32. p. 62.*

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1737. January 14. FERGUSON against MUIR.

HOUSE rents prescribe *de anno in annum* though the tenant continue in possession ; and the tenant's removal does not give commencement to the prescription, as in land rents ; though it was argued, that possession ought to be an interruption in this case, as well as the contracting new articles in the case of merchant-accounts. See APPEEDIX. No 308.

*Fol. Dic. v. 2. p. 121.*

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1740. February 19. DRUMMOND against STEWART.

IN an action for payment of an account of debursements laid out about 30 years ago by the pursuer, upon his friend's affairs as *negotiorum gestor*, the question was, whether this fell under the general words in the act 83d, Parl. 6th, Ja. VI introducing the triennial prescription, " other like debts not constitute by writ ;" upon which the Court was much divided, insomuch, that upon advising a petition against the Ordinary's interlocutor sustaining the prescription, of eleven Lords then present, besides the President, five voted for altering the interlocutor, three for adhering to it, and three were *non liquet*. No 309.

But upon advising the petition against this interlocutor, the LORDS by a much greater plurality, " adhered to their former interlocutor," upon this ground, that by other like debts was to be understood other debts of the like nature with those particularly expressed in the statute ; and as all the particu-

No 309. lars expressed in the statute were reducible to sale or location, the same were not to be extended to *negotiorum gestio*.

*Kilkerran*, (PRESCRIPTION.) No 7. p. 418.

\* \* \* Clerk Home's report of this case is No 71. p. 5858. ; *voce* HUSBAND and WIFE.

1741. June 23. KENNEDY against M'DOUGAL.

No 310. THE triennial prescription of an accompt of particulars furnished to a defunct, found not to be interrupted by continuation of furnished to the heir ; for as every merchant begins a new accompt with the heir, so by the same argument that furnishings to the heir should be considered to continue a currency of the defunct's accompt, furnishing to one of a dozen executors should have the same effect.

*Kilkerran*, (PRESCRIPTION.) No 8. p. 419.

\* \* \* C. Home reports this case :

MR KENNEDY brought a process before the Sheriffs of Edinburgh, against Mr Charles M'Dougal advocate, for payment of an apothecary's accompt of furnishings of drugs to his deceased father, Patrick M'Dougal of Crichen. To which it was *objected*, That the same was prescribed by the lapse of more than three years from Crichen's death.

*Answered* ; That the defence was taken off by the currency of the accompt, by furnishings made to his representative, Mr Charles.

*Replied* ; He was only an heir *cum beneficio*, and an executor confirmed, and that these not being universal passive titles, the doctrine, though it were true, could not apply in this case. The Sheriffs sustained the defence, and, upon a proof of the furnishing, pronounced decret. Upon this decret, Mr Kennedy craved to be ranked amongst the personal creditors of Crichen, and to draw a share of his lands and moveables. To which the other creditors renewed the objection of prescription.

*Answered* ; That it could not be denied, that a merchant's, surgeon's, or any other accompt of the like kind, furnished to a defunct, is continued by furnishings to his representative ; the only question that remains is, whether it alters the case, that the heir or executor is only liable to a limited effect, viz. to the extent of the inventories only ?

As to which, it was *observed*, That there could be no difference ; for, if the continuance of the accompt in the person's own right, is sufficient to save it against prescription, even in a question with prior competing creditors, it is plain, that a deficiency of the fund of payment falling to the heir, cannot pre-