

No 310.

dition, or immixtion, or not. But supposing Mr Kennedy's doctrine true, it will never hold in the case of partial passive titles, subjecting the representatives only *in valorem*, and the reason is, because the rule *hæres est eadem*, &c. only applies to the case of universal successions.

THE LORDS sustained the objection of prescription.

C. Home, No 172. p. 289.

1753. February 14.

EXECUTRIX of Dr MATTHEW WRIGHT *against* DAVID DICKSON.

No 311.

Prescription
of an account
found to run
from the last
article.

IN the year 1731, Baillie of Walston was, by an inquest in England, found lunatic, and the custody of his person was, by a grant under the Great Seal, committed to Dr Matthew Wright.

The Executrix of Wright pursued Dickson, as representing Walston, for payment of certain sums, said to have been expended for the use of Walston by Wright, as having the custody of his person.

Objected by Dickson; The statute of limitation, 21st James I. provides, 'That all actions of account, other than what concern merchandize between merchant and merchant, shall be commenced within six years after the cause of action, and not after.' Now, the account in question does not concern merchandize between merchant and merchant; and, although it commences in October 1731, yet was not pursued for until October 1738; and, therefore, as much of it as is not within six years of the date of the summons is, by the law of England, prescribed, and cannot be the ground of action.

Answered for the pursuer; An account is a claim composed of different articles, and the prescription of accounts has, with us, been found to run from the last article; were the prescription to run from every single article, every such article would be an account by itself, which is contrary to the nature of an account as here described; and as the Court has so explained the prescription of accounts in our law, so also ought the prescription provided in the statute of limitation to be understood.

"THE LORDS found, that, by the statute of limitation, the account pursued on, prescribed only from the last article thereof."

Act. R. Dundas & Haldane.

Alt. Macintosh.

Clerk, Justice.

D.

Fol. Dic. v. 4. p. 108. Fac. Col. No 65. p. 100.