

1781. June 13.

JAMES BUTCHART and Others, Owners of the Ship Owner's Good Will of Aberbrothick, *against* ALEXANDER MUDIE and JOHN RENNY, Trustees for the Creditors of the deceased CHARLES KENNY, Master of said Ship.

CHARLES KENNY, master of the ship called Owner's Good Will, being shipwrecked on the coast of Norway in 1773, he himself, and all his papers were lost. Trustees were appointed by his creditors; and the pursuers claimed to be ranked upon his funds for their share of the freights earned by the ship, from April 1768, the date of their last clearance.

The triennial prescription, established by act 1579, was pleaded, *inter alia*, by the defenders, and the LORD ORDINARY sustained it as a good defence; but, upon a reclaiming petition, the LORDS remitted the cause to the Ordinary; and the same having been again brought before them by report, they

“Repelled the defence of prescription.”

A reclaiming petition was refused without answers.

The Court considered this as of the nature of an action against a factor, or *negotiorum gestor*, which could only be cut off by the long prescription.

Lord Ordinary, *Justice-Clerk.* Act. *John Ramsay.* Alt. *W. Nairne.*  
D. Fol. *Dic. v. 4. p. 106.* Fac. *Col. No 54. p. 94.*

No 318.

Act 1579, cap. 83, does not apply to accounts between the master of a ship and its owners.

1782. July 19.

RAMAGE *against* CHARTERIS.

RAMAGE, a merchant of York, had been in the use of furnishing sundry articles of thread manufacture to Charteris, who carried on trade in Scotland.— In 1780, he instituted an action for payment of a balance alleged to be due to him. In the account exhibited in this action, the last article furnished by him bore date in the year 1776; so that, in this view, the triennial prescription introduced by the statute 1579 had taken place. But the defender having furnished goods to him within the three years, he made these furnishings a part of his account, by which means it appeared to be current till within a year of commencing the action.

The question was, Whether the statute operated in the present case?

*Pleaded* for the defender; So long as a merchant continues to furnish goods to his employer, his claim, by the equitable interpretation of courts of law, is preserved from the effects of the statute 1579; Erskine, b. 3. tit. 7. § 17. It never can be imagined that in these circumstances he will take legal measures to effectuate payment of what is due to him; and the expression used by the legislature, excluding all intention of commencing the prescription from the date of each article, has afforded an opportunity of reconciling the enactment.

No 319.

Prescription of a merchant's accounts not interrupted by furnishings made by the other party to him.