

1670. February 26. GEORGE GRAHAM *against* The LAIRD of STANEBYRES.

No 283.

An account was found to be current and probable by witnesses, though part of the articles were furnished to a defunct, and the rest to his heir.

GEORGE GRAHAM merchant in Edinburgh, pursues the Laird of Stanebyres for a merchant-count, taken off partly by his umquhile father before his decease, and partly by his factors and servants thereafter. It was *alleged* as to the defunct's part of the account, the same was not pursued within three years of the off taking, and therefore it is only probable by writ or oath of party. The pursuer *answered*, That he was ordinary merchant to the defunct for many years, and that this was a current account to the defunct and his heir, the defunct's funeral's having been taken off at his death, and the other subsequent furniture to the heir always since; so that there are not three years betwixt that part of the account that is for the funerals, and the last of the current account given off to the defunct, and therefore it remains a current account as to both. *2dly*, There are not three years betwixt that part of the account furnished to the defunct and the summons raised against his heir, deducting the year and day in which the heir could not be pursued which is *intra annum deliberandi*. The defender *answered*, That the currency of an account was never extended to a defunct and his heir, but only to one person, to exclude the prescription of probation by witnesses; neither in this short prescription is minority, or any other incapacity to be deducted, and the pursuer ought to have raised his summons *intra annum deliberandi*, though he could not have obtained decret.

THE LORDS sustained the count, both against the defunct and heir, as a current account to be proved by witnesses for the whole.

*Fol. Dic. v. 2. p. 121. Stair, v. 1. p. 675.*

1675. December 16.

A. *against* B.

No 284.

THE LORDS found, that a merchant being in use to furnish diverse years, that a current account did not prescribe; though some were of opinion, that the act of Parliament bearing no distinction, the articles of account ought to prescribe from their respective dates; seeing otherwise the act of Parliament may be excluded, both in the case of counts and other cases which prescribe by the act.

Reporter, *Nevey*,

*Fol. Dic. v. 2. p. 120. Dirleton, No 183. p. 155.*