

No 431. arrestment, though the decret was turned into a libel, because obtained in absence, yet it was a standing decret till 1699, and so was a sufficient interruption of the prescription. *Answered*, This decret being null, as being given *a non suo iudice*, viz. the commissaries, above their instructions, and against James Menzies, who was both a member of the College of Justice, and dwelt not within that jurisdiction, it can never be a decret, and so no interruption at all; and the like was found betwixt Scott of Bowhill, and Grieve of Pinnacle. *Replied*, The commissary was most competent to the principal party cited, who dwelt within his bounds, and Menzies was only cited *pro interesse*, and summoned by letters of supplement, which was sufficient; and any interpellation was sufficient to interrupt prescription, even defective and null executions, and for the practick alleged, it was neither produced, nor did it meet this case. THE LORDS repelled the defence, and found the arrestment not prescribed, but sufficiently interrupted by the decret, though afterwards turned into a libel.

Fountainhall, v. 2. p. 340.

* * * A similar decision was pronounced in a case respecting the vicennial prescription of holograph writs, 21st March 1707, Corbet against Hamilton, No 106. p. 2642.; *voce* COMPENSATION.—RETENTION.

No 432.

1708. July 16. & 17. THOMSON *against* EARL of LINLITHGOW.

A GENERAL charge to enter heir was not sustained as sufficient to interrupt the triennial prescription of an account.

Fol. Dic. v. 2. p. 127. Fouutainhall. Forbes.

* * * This case is No 58. p. 4504., *voce* FOREIGN.

No 433.

1708. February 20.

GIDEON ELLIOT, Chirurgion Apothecary in Edinburgh, *against* The REPRESENTATIVES of Captain WILLIAM VEACH.

IN the pursuit at the instance of Gideon Elliot against the Representatives of Captain William Veach, for payment of an account of medicaments furnished by the pursuer to the defunct; the LORDS found, that the three years prescription of the said account *quoad modum probandi* by witnesses, was interrupted by a letter from him to the pursuer, acknowledging debt in general, and that he had ordered his payment by a friend.

Fol. Dic. v. 2. p. 129. Forbes, p. 247.

* * * A similar decision was pronounced, February 1730, Chalmers against Ogilvie, see APPENDIX.