

No 273. and therefore no action is competent, unless the presumption is redargued by a proof of resting owing, which being brought, there is no pleading this prescription, but a proof of the furnishings, or of the possession : Or suppose they are admitted, and suppose further it be admitted, that no donation was intended, yet this will not avail after three years.

The quotations for the pursuer were, 16th Feb. 1681, Spence, *voce* PRESUMPTION; Sande Decis. Fries. lib. 5. tit. 6. defin. 1.; 23d July 1678, Thomson, No 57. p. 419. And for the defender, 23d June 1715, Forrest, No 302. p. 11098.

THE LORDS found, That the aliment of the minor fell under the triennial prescription; and that the bond by the curator being granted after the curatory expired, does not prove that the aliment was resting.

*Fol. Dic.. v. 4. p. 105. C. Home, No 135. p. 230.*

\*.\* Kilkerran reports this case :

IN a process against the heir of a minor for her aliment, an Ordinary having repelled the defence upon the triennial prescription, upon this ground, That all the particulars mentioned in the statute fell under sale or location, whereas aliment furnished to minors without paction, falls under neither, but is a *negotium gestum*; that further, all the cases mentioned in the statute are of debts that are in use to be recently paid, and without taking discharges in writing, which could not be said of aliments furnished to minors, which are not in use to be paid by curators during minority, without a written document; upon a reclaiming petition, the LORDS found, ' That the aliment of the minor fell under the triennial prescription.'

They thought it unreasonable that the privilege given to a major should not be competent to a minor, of pleading this prescription, and that contrary to the genius of the law a minor should be less privileged than a major.

N. B. Upon an appeal this judgment was reversed.

*Kilkerran, (PRESCRIPTION.) No 3. p. 415.*

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1747. *January 20.* NICOLSON *against* MONRO.

SCHOOLMASTER'S salary found not to fall under the triennial prescription.

*Kilkerran, (PRESCRIPTION) No 13. p. 421.*

No 275.

Aliment of a bastard child found not to fall under the triennial prescription of the act 1379.

1758. *February 14.* MARION PATERSON *against* JAMES COCHRAN of Kirkwood.

MARION PATERSON, in 1755, brought an action against Mr Cochran, for aliment of a bastard child which she had brought forth to him in the year 1730.

The defender acknowledged his guilt with the pursuer, and that about twenty years ago he made several payments, amounting to about L. 100 Scots, to her

on that account, which he thought was in full of all she could ask ; and *insisted*, That as she had never made any demand on him since that time, her claim was now prescribed by the act 83. parl. 1579, by which it is declared, ' That all actions of debt for house-mails, mens ordinaries, &c. and other the like debts, that are not founded upon written obligations, be pursued within three years ; otherwise the creditor shall have no action, except he either prove by writ, or by oath of his party.'

*Answered* for the pursuer, The father is under a natural obligation to furnish aliment to his child, which obligation cannot prescribe ; and it is absurd to say, that when another performs this obligation for the father, his claim for relief should be cut off by the triennial prescription. *2do*, Supposing the claim was to be referred to the defender's oath, all that he could depose upon would be how much he had truly paid, that the same might be deducted from the pursuer's claim.

*Observed* on the Bench, The act 1579 proceeds upon a presumption, that debts of the kind there mentioned are paid, either at the time, or before the three years expired. But here the defender does not say, that he paid a reasonable aliment. All he gave, by his own account, was about L. 100 Scots ; therefore he ought now to pay the remainder, which, in the case of a gentleman, ought to be maintenance of the child till it is fourteen years of age.

" THE LORDS repelled the defence founded on the act 1579, and found the defender liable in L. 40 Scots yearly for maintenance of the child till fourteen years of age ; and in expenses of process."

Act. *Swinton*.Alt. *Macqueen*.

C.

*Fol. Dic. v. 4. p. 105. Fac. Col. No 97. p. 173.*

1791. February 15:

AGNES FORSYTH *against* GEORGE SIMPSON.

AGNES FORSYTH bore to Simpson a bastard child, of whom she had the custody during his childhood. When he was about seventeen years of age, she brought an action against Simpson for payment of a sum of money, corresponding to an yearly allowance for aliment to the child, while he was maintained by her ; she having *alleged*, That little or nothing had been paid on that account by Simpson. To this claim he objected the triennial prescription, and

*Pleaded* ; By the statute 1579, cap. 83. it is declared, " That all actions of debt for house-mails, mens ordinaries, servants fees, merchants accounts, and other the like debts, that are not founded on written obligations, be pursued within three years, otherwise the creditor shall have no action, except he either prove by writ or by oath of his party." Claims for aliment being comprehended under this statute, it is plain that the present one has suffered this prescription. It is true, that it is made by the mother, and not by a stranger, which however is of no consequence, because in either case the nature of the debt is

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The defender had acknowledged he had paid only a certain sum, which was evidently not sufficient.

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A claim for bygone aliment of a bastard child, made by the mother against the father, found to fall under the triennial prescription.