

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.

No 274

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