

three years ; but the defender having no writ, his furnishing being past three years, could not be proved by witnesses, either by way of action or exception. No 288:

*Fol. Dic. v. 2. p. 120. Stair, v. 2. p. 885.*

1682. November.

TUTOR OF CRAIGIEVAR *against* GRAY.

No 289.

ONE having writ to a young man, desiring him to come and attend his son, and he should have 100 merks of fee ; and the said person having accordingly served five years, he pursued the writer of the letter for the 500 merks. *Alleged* for the defender, That servants' fees prescribe in three years. *Answered*, The pursuer doth partly prove his claim by writ, viz. the letter. THE LORDS found the libel relevant to be proved only *scripto vel juramento*, in respect it is usual for masters to pay their servants yearly without receipts, and there was no writ after the service, acknowledging the fee to be resting.

*Fol. Dic. v. 2. p. 120. Harcarse, (PRESCRIPTION.) No 760. p. 215.*

1685. February.

ARMOUR *against* BOICK.

No 290.

JAMES FOULIS having paid the freight, expense, and charges of some goods that came from the plantations to England, consigned to him for the use of some Glasgow merchants ; and having shipped these goods in a Scots bottom for Scotland, with bills of loading to the merchants, and a general accompt of charges, which was paid by some of the merchants, who recurred against the rest by an action for paying in their proportions ;

*Alleged* for the defender ; That the said accompt was unnecessarily paid to Foulis, seeing it was prescribed *quoad modum probandi*, by the elapsing of three years between the furnishing and the payment.

*Answered* ; The goods for which the freight and charges were paid, being the return of an outward cargo furnished by Mr Foulis, a factor, in obedience to the joint commission granted to him by the defender and pursuers : *2do*, The accompt was of money expended by Mr Foulis as a factor, and not of goods furnished by him as a merchant, which only falls under the act of Parliament.

THE LORDS sustained the answer ; and found, That, by the law of burghs, factors advances was to bear annualrent from the time of their furnishing the money, though no annualrent was pactioned.

*Harcarse, (PRESCRIPTION.) No 772. p. 219.*