

No 302. seeing the representation of the intermediate predecessors was not libelled to be universal, but only *secundum vires inventarii*.

Fol. Dic. v. 2. p. 121. Dalrymple, No 147. p. 202.

* * Bruce's report of this case is No 62. p. 9713, *voce* PASSIVE TITLE.

1716. July 25.

HAMILTON of Bangour *against* My LADY ORMISTON and her CHILDREN.

No 303.

Aliments
prescribe,
*quoad modum
probationis,*
in 3 years.

IN a process betwixt these parties, among several other points this came to be discussed, viz. What is the term of prescription of bygone aliment? And it was *contended* for the defenders, That all aliments prescribe, *quoad modum probationis*, in three years, conform to the act James VI. Parl. 6th, cap. 83d, by which it is statuted, That all actions of debt, for house-mails, men's ordinaries, servants' fees, merchants' accounts, and other the like debts, that are not founded upon written obligations, be pursued within three years, otherways the creditor shall have no action, except he either prove by writ, or by oath of his party.

Answered for the pursuer; That there is not one word in the act of Parliament that with any propriety of speech can be extended to signify aliments; and that "men's ordinaries" which is the only word that can with any colour be so stretched, by the common and known acceptation of the word, signifies no more but men's entertainment and mails in a public-house, and that the words, "all others of the like nature," are certainly restrictive, and do exclude aliments, as being of a very different nature from any that are there enumerated.

Replied for the defender; That aliments fall very properly under the act, it being designed to cut off many debates for debts that had *tractum*, which consisted of furnishing from time to time, and were not usually constituted by writ, and where the presumption lay that they would not lie over unpaid, and frequently not being constituted by writ, receipts and discharges were often omitted; and therefore, *imo*, "Men's ordinaries" may very well include aliment, which is a daily provision; and though the true import of the word is not at this day so well understood, yet in the general notion of it, it seems to comprehend all maintenance furnished from time to time; *2do*, Though the word had a restricted signification, yet the other clause in the act "and other the like debts," does certainly comprehend the subject in question, the act being plainly designed to take in all those current accounts of furnishing, providing, &c. and there can be no difference assigned betwixt the merchant's and the entertainer's account; nay, the reason of the law militates much more in this than the other, the advance for aliment being more necessary, and not so usually lying over as that of merchant-accounts; *3tio*, Our practice favours it, for so it was almost *in terminis* decided in February 1714, Lady Carnfield against the

Duke of Gordon, (see APPENDIX); and it is consonant to Sir George M'Kenzie's opinion, who, in his observations upon this act, says, That if action be intended within the three years upon spuilzies, removings, or aliments, &c. it does not prescribe in less than 40 years.

“THE LORDS found the aliment prescribed in the terms of the act of Parliament.”

Act. *Bozwell.* Alt. *Sir Walter Pringle.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 119. Bruce, v. 2. No 25. p. 33.

. A similar decision was pronounced January 1722, Cuming against Andrew; see APPENDIX.

1724. February 11. GUTHRIE against The MARQUIS of ANNANDALE.

IN a process against the Marquis of Annandale, as representing his father, for payment of an account of horse-furniture and saddler-work, the defence made against the debt was prescription, there being more than three years elapsed since the last article of the account.

To which it was *answered*, That the account was signed by the late Marquis's master of horse; and since the articles of it fell properly under that sort of business whereof he had the trust, his subscription must be as good as his master's, so as to preserve the account from prescribing for 20 years.

It was *replied* for the Marquis, That though a servant may contract for his master, and fix an obligation on him, when the contract is made with respect to such matters as are usually committed to his charge, yet his subscribing an account can never prescribe the debt for a longer time than that to which it would otherwise have subsisted; for since the act of Parliament expressly requires the writ of the party, the servant's prescription can at best be but a presumptive evidence of the contraction, but can never prove resting owing after the years of prescription.

THE LORDS found, That supposing the master of horse was employed in buying of furniture, yet the defence of prescription was competent to the Marquis.

Reporter, *Lord Pollock.* Act. *Jo. Horn.* Alt. *Alex. Hay.* Clerk, *Gibson.*

Fol. Dic. v. 4. p. 106. Edgar, p. 27.

No 303.

No 304.

In a process for payment of an account of horse-furniture, the defence was prescription. Answered, that the account was signed by the defender's master of horse; and since the articles of it fell under that sort of business whereof he had the trust, his subscription must be as good as his master's. The Lords found the defence of prescription competent.