

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.