

1630. July 2.

HERRIS *against* SCOT.

No 280.

Effect of con-
tinued fur-
nishing.

ONE Scot beer-brewer being convened by Herris, coal-grieve to the Lady Lothian, for the prices of coals furnished to him in the year 1625, and since synne yearly; and the defender *alleging*, That the furnishing in the years 1625 and 1626 was prescribed by the act of Parliament 1579, not being pursued within three years, and so was not probable by witnesses, but by writ or oath; the allegiance was repelled, and the summons found probable for these years also by witnesses, because the pursuit was for a continued furnishing, not only these two years, but still on yearly thereafter, which was in effect a compt, and the prescription cannot be esteemed to begin but after the last time of the furnishing, which is *in anno* 1629; likeas *in anno* 1627 the parties compted amongst themselves for the furnishing of the two preceding years, in respect of which compt then made, and that the defender promising payment of the two preceding years, the prescription was found to be interrupted, and this compt and the promise were also found probable by witnesses; also the LORDS found that the pursuer *hoc titulo* as coal-grieve had good interest to pursue this action, albeit he had libelled no power from those who had right to the coal, but the procurator for the Lady concurred also to the pursuit.

Act. *Belshes.*Alt. *Cunningham.*Clerk, *Hay.**Fol. Dic. v. 2. p. 120. Durie, p. 522.*

. Auchinleck reports this case:

IN an action of spuilzie pursued by Herris coal-grieve, for certain coals furnished to him by Thomas Scott, beer-brewer, for the years 1625, 1626, 1627, 1628, and 1629, it was *alleged*, That the action was prescribed for any furnishing made preceding the last three years. To which it was *answered*, That the coal-grieve and the defender had compted for all years preceding the last three years before witnesses, and the compt extended to L. 100, which compt interrupted the prescription, he proving the same *prout de jure*; which the LORDS found relevant.

Auchinleck, MS. p. 163.

1633. March 9.

MAXWELL *against* WELSH.

No 281.

Triennial pre-
scription not
extended to
intromitters
with rents.

ONE Maxwell donatar to the Lo. Herries' escheat, (which was confessed to be to the Lo. Herries' own behoof,) pursues by a special declarator Thomas Welsh messenger, to refund certain bolls of meal intromitted with by the defender, pertaining to the rebel yearly, of the years 1624, and sinsyne; and the