

of any one of the tutors is sufficient, seeing that would give recourse to the chargers, against the other's representatives.

No 337.

THE LORDS found, that the tutor's oath could not prejudge the chargers.

*Fol. Dic. v. 2. p. 238. Forbes, p. 183.*

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

No 338.

AN account of horse-furniture and saddle-work furnished to a Nobleman, though subscribed by his master of horses, *præpositus tali negotio*, within the three years, was yet found to fall by the triennial prescription.

*Fol. Dic. v. 2. p. 239. Edgar.*

\* \* \* This case is No 304. p. 11101. *voce* PRESCRIPTION.

1771. January 23. JAMES PATERSON against WILLIAM TAYLOR.

No 339.  
Oath of the wife competent to prove furnishings made to herself or the family.

PATERSON pursued Taylor for payment of an account of furnishings to Taylor's wife and daughter; and to other persons, it was said, in consequence of express orders from Mrs Taylor. Taylor *pleaded* prescription; upon which the pursuer offered to instruct the furnishing by Mrs Taylor's oath; which the LORD ORDINARY found to be a relevant mode of proof.

In a reclaiming petition, Taylor *maintained*,

That no relevant proof was offered; Mrs Taylor could not be referred to on oath as a party, and it was incompetent to adduce her as a witness against her husband; Erskine, B. 4. T. 2. § 22.; Lord Stair, B. 4. T. 43. § 7.; Fountainhall, 23d July 1700, Erskine of Pittodry, *voce* WITNESS.

The pursuer *answered*,

That the oath of the wife was good proof against the husband, and sufficient to subject him in payment of such furnishings as were made to the wife, either when they were of such a nature as to fall under the presumed *præpositura negotiis domesticis* of the wife, or in matters where she acted in consequence of the express order or direction of the husband; as to which she must be considered as a party; Bankton, v. 1. p. 125.; Erskine, B. 1. T. 6. § 15.—*See* HUSBAND and WIFE, Div. VI.

THE LORDS pronounced the following interlocutor: "Find it relevant for the pursuer to prove the articles of the account libelled, so far as the same were furnished to the defender's wife and his family, by the oath of Mrs Taylor; but find that, *in hoc statu*, the other articles of the account must be proved *aliunde*."

Lord Ordinary, *Gardensione*.

For Paterson, *Elphinston*.  
Clerk, *Ross*.

For Taylor, *Boswell*.

R. H.

*Fac. Col. No 67. p. 199.*