

on that account, which he thought was in full of all she could ask ; and *insisted*, That as she had never made any demand on him since that time, her claim was now prescribed by the act 83. parl. 1579, by which it is declared, ' That all actions of debt for house-mails, mens ordinaries, &c. and other the like debts, that are not founded upon written obligations, be pursued within three years ; otherwise the creditor shall have no action, except he either prove by writ, or by oath of his party.'

Answered for the pursuer, The father is under a natural obligation to furnish aliment to his child, which obligation cannot prescribe ; and it is absurd to say, that when another performs this obligation for the father, his claim for relief should be cut off by the triennial prescription. *2do*, Supposing the claim was to be referred to the defender's oath, all that he could depose upon would be how much he had truly paid, that the same might be deducted from the pursuer's claim.

Observed on the Bench, The act 1579 proceeds upon a presumption, that debts of the kind there mentioned are paid, either at the time, or before the three years expired. But here the defender does not say, that he paid a reasonable aliment. All he gave, by his own account, was about L. 100 Scots ; therefore he ought now to pay the remainder, which, in the case of a gentleman, ought to be maintenance of the child till it is fourteen years of age.

" THE LORDS repelled the defence founded on the act 1579, and found the defender liable in L. 40 Scots yearly for maintenance of the child till fourteen years of age ; and in expenses of process."

Act. *Sewinton*.Alt. *Macqueen*.

C.

Fol. Dic. v. 4. p. 105. Fac. Col. No 97. p. 173.

1791. February 15:

AGNES FORSYTH *against* GEORGE SIMPSON.

AGNES FORSYTH bore to Simpson a bastard child, of whom she had the custody during his childhood. When he was about seventeen years of age, she brought an action against Simpson for payment of a sum of money, corresponding to an yearly allowance for aliment to the child, while he was maintained by her ; she having *alleged*, That little or nothing had been paid on that account by Simpson. To this claim he objected the triennial prescription, and

Pleaded ; By the statute 1579, cap. 83. it is declared, " That all actions of debt for house-mails, mens ordinaries, servants fees, merchants accounts, and other the like debts, that are not founded on written obligations, be pursued within three years, otherwise the creditor shall have no action, except he either prove by writ or by oath of his party." Claims for aliment being comprehended under this statute, it is plain that the present one has suffered this prescription. It is true, that it is made by the mother, and not by a stranger, which however is of no consequence, because in either case the nature of the debt is

No 275.

The defender had acknowledged he had paid only a certain sum, which was evidently not sufficient.

No 276.

A claim for bygone aliment of a bastard child, made by the mother against the father, found to fall under the triennial prescription.

No 276.

the same. Nor is the decision Paterson *contra* Cochrane, No 275. p. 11080, of a contrary tendency; for there the father having owned the debt, no room was left for prescription.

Answered; If the defender had granted to the pursuer a written obligation for payment of this alimentary debt, then, by the express terms of the statute, the prescription could not have applied to the case. Now, as the law itself had conferred on the pursuer the character of creditor, on account of aliment furnished by her during the legal period of her custody of the child, any writing to that effect would have been absolutely superfluous and nugatory. But still, as has been shewn, the prescription would have been excluded; and as this consequence could not be owing to the superfluous writing, it seems to follow almost demonstrably, that it arises from the nature of the case; or, in other words, that the triennial prescription is not applicable to a claim like the present, made by the mother of a bastard against the father.

THE LORD ORDINARY "sustained the defence founded on the triennial prescription."

And, on advising a reclaiming petition and answers,

THE LORDS adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Dunsinnan*. Act. *Steuart*. Alt. *G. Ferguson*. Clerk, *Mitchelson*.
S. *Fol. Dic. v. 4. p. 105. Fac. Col. No 164. p. 334.*

S E C T. IV.

Triennial Prescription of Accounts, Act 1579. c. 83.

1610. July 23. RUSSEL and ERSKINE *against* Earl of ARGYLE.

No 277.

SUMS of money for furnishing of nobleimen's houses may not be craved, unless the action have been intented within three years after the debt, unless the matter be proved by writ or oath of party; because the act of Parliament of prescription of house mails, servant's fees, and others of that nature was interpreted to comprehend such furnishing.

Fol. Dic. v. 2. p. 119. Haddington, MS. No 2500.