

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.