

1628. December 28. MINISTER at KILBUCHO against A TENANT.

No 278.

MR ROBERT ELLIOT, minister at Kilbucho, pursued N. for the duty of his glebe-land, for the crops 1623 and 1624, which he had set to him for a certain duty. *Alleged*, That this being of the nature of house mails, was prescribed by the 83d act of Parliament 1579, and so could not be proved but by writ or oath of party. THE LORDS repelled this allegiance, and found that the act of Parliament did not extend to the duties libelled.

*Fol. Dic. v. 2. p. 120. Spotiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) p. 236.*

\* \* \* Auchinleck reports this case :

1628. December 13.

THE minister of Kilbucho, in December 1628, pursues a tenant who had occupied his glebe for the farm thereof, crops 1623 and 1624. It was *alleged* by the defender, That the said libel could not be proved but by writ or oath of party, because the pursuit was of the nature of those actions and debts which prescribed, except they were founded upon writs, conform to the act of Parliament James VI. Parliament sixth, cap. 83. THE LORDS repelled the exception, and would not extend the said act to farms or mails of land.

*Auchinleck, MS. p. 162.*

1630. February 15.

Mr JAMES ORD against DUFFS.

MR JAMES ORD having pursued Duffs, as heirs and executors to umquhile Alexander Duffs, for payment of the prices of certain glasses, viz. drinking glasses and window glasses which were received by the said umquhile Alexander at sundry times pertaining to Mr James, and were sent by him to England with his servant in a ship, freighted by the said Alexander to that effect, in which ship the said Alexander made sail, and who, after selling of the said glasses in Hull in England, intromitted with the whole prices thereof, and never made him payment thereof. THE LORDS found, That this action (which was not intended within three years after the time of the libelled intromitting with the glasses and prices thereof) came under the act of Parliament 1579 anent prescription in certain cases of debt, not being pursued *debito tempore*, and therefore that the same could not be proved but by writ or oath of party, and that it was not probable by witnesses, no more against the executor than against the defunct.

No 279.

The triennial prescription takes place with respect to goods bought at different times by one merchant from another, to be sold again, as well as where brought by private parties for their own use.

*Act. Nicolson & Oliphant.*

*Alt. Cunningham.*

*Clerk, Hay.*

*Fol. Dic. v. 2. p. 119. Durie, p. 492.*