

No 291. 1687. *February.* IRVING *against* MAXWELL of Barncleugh.

FOUND that alimenting, and process of defence thereon, do not prescribe in three years, that not being in the case of men's ordinaries mentioned in the act of Parliament.

The like was found betwixt John Dick and Walter Gibson, merchant in Glasgow.

Harcarse, (PRESCRIPTION.) No 776. p. 220.

No 292. 1688. *February.* WILLIAM BAIRD *against* Mr JOHN MONTGOMERY Writer.

FOUND that the act of triennial prescription of servants fees, viz. act 83d, Parl. 6. James VI. did not concern bargains of sale for moveables.

Harcarse, (PRESCRIPTION.) No 778. p. 220.

No 293. 1692. *December 21.* JAMES BAYN *against* ———.

JAMES BAYN wright, having reclaimed against an interlocutor, finding that wright and mason-work not pursued for within three years, fell within the compass of the triennial prescription, introduced by the 83d act 1579; *alleging*, That was only in merchants accompts, and not in such tradesmen's, where the work was durable and permanent for many years; and that rents of lands in the country, and seamens wages, had been found not to be included in that act;—the LORDS found no reason of diversity, but that they prescribed as well as other tradesmen's accompts.

Fol. Dic. v. 2. p. 120. Fountainhall, v. 1. p. 535.

No 294. 1694. *June 8.* ELIZABETH TWEEDIE *against* WILLIAMSON of Cardrona.

ELIZABETH TWEEDIE, relict of Nisbet, mason, pursues Williamson of Cardrona, upon an agreement for the wages in building his house. *Alleged*, It is not pursued within three years, and so is prescribed by the act of Parliament 1579, *quoad modum probandi* by witnesses. *Answered*, This is not of the nature of house-mails, servants fees, &c. and therefore cannot be comprehended under the general clause, because these things are soon consumed and gone like fruits; but it ought not to hold in houses, and such things that remain and are of long endurance; and she ought to be allowed to prove by witnesses present what was the bargain, and she was content to stand to his oath as to his payments;

but the LORDS finding the law general, would not distinguish so nicely; for then it may be extended to many things else, as watches, rings, and silver-work; that because the subject is extant, therefore the prescription should not take place.

No 294.

Fol. Dic. v. 2. p. 120. Fountainball, v. 1. p. 619.

1708. July 16.

THOMSON and HAY *against* Earl of LINLITHGOW and His CURATORS.

THE LORDS refused to deduct any part of the *annus deliberandi* after the debtor's death to hinder prescription against the creditor, because the debtor's heir was served and retoured within the year.

No 295.

Forbes. Fountainhall.

. This case is No 58. p. 4504. *voce* FOREIGN.

1709. November 11. Lord and Lady ORMISTON *against* HAMILTON.

No 296.

FOUND that an accompt for a person's funeral, mournings of the family, and their maintenance to the next term after his death, taken off by a *negotiorum gestor*, who was neither heir nor executor, did not continue the currency of a former accompt due by the defunct to the same merchant to interrupt prescription thereof *quoad modum probandi*.

Fount. Forbes.

. This case is No 2. p. 4981. *voce* FUNERAL CHARGES.

1709. July 14.

POOR KATHARINE GRAHAM, Relict of John Murray, sometime Gunner in the Castle of Edinburgh, *against* The Earl of LEVEN and Major COLT.

IN the action at the instance of Katharine Graham, as executrix to her husband, against the Earl of Leven, governor of the Castle of Edinburgh, and Major Colt, paymaster to the garrison, for payment of L. 41 : 15 : 5d. Sterling resting of her husband's pay as serjeant for several months preceding September 1698, at 1s. 8d. *per diem*, conform to the establishment; the pursuer offered to prove by the muster-roll, or by witnesses, that her husband served so long

No 297.
A soldier's arrears found not to fall under the three years prescription.