

Duplied for the defender ; Writers cannot plead any hypothec from the sole having of an employer's writs, unless they make appear that a debt is resting ; hypothecation being but an accessory security. If the mere having of the writs did interrupt the prescription, no person that had been employed as a writer, could ever thereafter be used safely as agent or otherways, in business formerly expedite by himself.

No 298.

THE LORDS found, That Mr Thomson's having the Earl's papers in his hand *jure hypothecæ*, doth not hinder prescription to run ; and that therefore the pursuer behoved to prove the compt to be resting owing by the Earl's oath.

But thereafter, December 13. 1709, the pursuer *pleaded*, That the currency of the accompt was continued by an article of a discharge of a back-bond granted by the Earl to Sir James Elphinston, and drawn by Mr Thomson within three years of commencing the process.

Alleged for the defender ; It is not a single *item* in three years that will make an accompt current, but a closs track of employment ; for, when people have occasion but for a single paper once in a year, it is usually paid at delivery, seeing the matter will not furnish out an account ; and it may be said that a current accompt, as allusion, requires continued employment and currency, the insensible gain whereof is understood to stop the advancer's craving.

Answered for the pursuer ; There is no fixed time known in our law or practice, for the connecting articles in accompts, which happen according as people have occasion to call for things ; and it is sufficient for the creditor in an accompt, that he was ordinarily employed by the debtor when he had business.

THE LORDS found, That the single article of the discharge being subscribed by the Earl, is relevant to continue the currency of the accompt ; and were clear that there is no distinction to be made betwixt merchant and writer accompts.

Fol. Dic. v. 2. p. 121. Forbes, p. 356.

1711. February 21.

JOHN WATSON, MASON in Broomhill, *against* THE LORD PRESTONHALL.

IN a suspension at the instance of the Lord Prestonhall of a charge given to him by John Watson, for payment of L. 219 : 17 : 2, resting to the charger, for building some mason-work, conform to a contract entered into betwixt the charger and the suspender ; the pursuer offered to prove by witnesses, that he had performed the work. It was *alleged* for the suspender, That the performance of the work not being proved by the contract, is prescribed *quoad modum probandi* by witnesses, since it was not insisted upon within three years, act 83d, Parl. 6th, James VI. But the LORDS found, That the said act of Parliament took no place here, the bargain being proved by writ.

No 299.
The performance of a bargain entered into by writ, falls not under the triennial prescription.

Fol. Dic. v. 2. p. 120. Forbes, p. 502.