

prisoner before the ten days were expired, and I have expended more than all the sum now decerned to me. The LORDS considered this was only a pursuit *ex quasi delicto*, for setting the prisoner at liberty, and that they had a probable ground of mistake and ignorance, on a new statute not yet fully interpreted, to think they might liberate at any time of the tenth day if the creditor did not offer to aliment the prisoner; therefore they assoilzied the Magistrates from expenses; but the LORDS thought the jailor's exaction too high and exorbitant, on the sums due.

No 4.

*Fol. Dic. v. 1. p. 236. Fountainball, v. 2. p. 238.*

1740. February 22.

EXECUTORS of the deceased MRS ANNA LEITH *against* the CREDITORS of the deceased WILLIAM FORBES of Tolquhon, her Husband.

THE said Mrs Anna Leith being provided to an annuity of 20 chalders victual, computing the chalder at 100 merks Scots money, after her husband's decease, and she having lived till the morning of Martinmas 1738, this question occurred betwixt her Executors and her husband's Creditors, which of them was preferable for the same.

THE LORDS found, That the liferentrix having lived to the Martinmas-day, albeit she died on the morning of that day, had right to the term's annuity, which fell due at Martinmas 1738; and therefore preferred the executors of the liferentrix to the creditors.

*Fol. Dic. v. 3. p. 180. C. Home, No. 148. p. 254.*

1762. January 15.

WILLIAM ELLIOT of Arkleton *against* MR JAMES FERGUSSON of Craigharroch, Advocate.

AT the Michaelmas meeting of the freeholders for the county of Dumfries, upon the 6th of October 1761, William Elliot of Arkleton claimed to be enrolled upon titles altogether unexceptionable. It was however *objected* by Mr Fergusson of Craigharroch, a freeholder present, That, as the law requires a claim for enrollment to be lodged two calendar months at least before the Michaelmas meeting; so, by two calendar months were meant, two of those months whereof their names are found in the calendar. And that, of consequence, all claims for enrollment upon the 6th of October ought to have been lodged some time in July, that the months of August and September might be free.

No 5.

*Dies inceptus habetur pro completo.*

No 6.

A claim for enrollment lodged with the sheriff-clerk at four o'clock in the afternoon of the 6th of August, held sufficient, tho' the Michaelmas bread-court convened upon the 6th of October, before two o'clock.

No 6.

To this it was *answered*: That by two calendar months, nothing could be meant but two months agreeable to the calendar, in opposition to two lunar months; that it was sufficient, if the space of two calendar months intervened, although the number of days were made up by including part of the days of these different months; and that the practice of all Scotland had explained the act of Parliament in that manner.

Mr Fergusson then *objected*: That, at any rate, there wanted two hours to complete two calendar months, in respect that the claim was only left with the sheriff-clerk at four o'clock in the afternoon of the 6th of August; whereas the meeting of freeholders convened upon the 6th of October betwixt mid-day and two afternoon.

To this it was *answered*: That, as the objection was at best extremely critical, so there was no real foundation for it, seeing that, in all cases of legal notice, it was only required, that either the day on which it was given, or the day to which it was given, should be free, but not both; and that, if either the 6th of August or the 6th of October were counted, the full amount of two calendar months would be found.

The freeholders, by a majority of votes, refused to inroll; but, upon a complaint to the Court of Session by Mr Elliot,

'THE LORDS ordered the complainer to be added to the roll.' See MEMBER OF PARLIAMENT.

*Act. W. Nairn.*

*Alt. Dav. Dalrymple.*

*A. Wight.*

*Fol. Dic. v. 3. p. 181. Fac. Col. No 77. p. 171.*

*See Ogilvie against Mercer, voce DEATH-BED, p. 3336.*

*See Mitchell against Watson, IBIDEM, p. 3343.*

*See APPENDIX.*