

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.

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*.

No 296.

*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.