

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.*

No 5.

*Dies inceptus habetur pro completo.*

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 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 head-court convened upon the 6th of October, before two o'clock.