1632. *February* 17. KINNAIRD *against* ZEAMAN.

No 164.

A BOND, and infeftment thereupon, being granted by a husband to his wife, and mentioning only love and favour, the LORDS found, that although it was never revoked, yet it ought to be understood to be granted in satisfaction of her contract of marriage *pro tanto, quia debitor non præsumitur donare* This, the observer of the decision says, was wrong, because the brocard only holds where there is no cause expressed of the donation, as there was here, viz. love and favour.

Fol. Dic. v. 2. *p.* 147. *Durie.*

*** This case is No 40. p. 5469.

1665. *June* 16. CRUIKSHANK *against* CRUIKSHANK.

No 165.
A *donatio mortis causa* by a man to his nearest of kin, to whom he owed a small sum by bond, found not to be in satisfaction of that bond.

GEORGE CRUIKSHANK pursues the relict and executrix of Cruikshank his uncle, for payment of a bond of L. 400. The defender *alleged*, Absolvitor; because the defunct had granted an assignation of certain sums of money to David Cruikshanks, the pursuer's brother, wherein there was a provision in favour of the pursuer, that the said David should pay to him a thousand pounds, which must be understood to be in satisfaction of this debt in the first place, *nam nemo præsumitur donare quamdiu debet.* The pursuer *answered*, That the foresaid rule hath many exceptions; for it being but a presumption, a stronger presumption in the contrary will elide it, as in this case. The defunct had no children, and had a considerable fortune, and the pursuer and the said David his brother were the defunct's nearest of kin; and albeit the foresaid disposition be not in the express terms of a legacy, yet it is *donatio mortis causa*; for it contains an express power to the defunct to dispone otherwise during his life, and in another provision therein it bears expressly, to be in satisfaction of debt due to that other party, and says not so as to the pursuer; all which are stronger extensive presumptions that the defunct meant to gift no less than the whole thousand pounds:

Which the LORDS found relevant.

Fol. Dic. v. 2. *p.* 146. *Stair, v.* 1. *p.* 282.

1668. *December* 15. WINRAHAME *against* ELIES.

No 166.

A FATHER having left a legacy to his second son, in full satisfaction of all he could demand by his father's death; it was not found to be in satisfaction also of a legacy left by a grandfather, and uplifted by the father; for though it was *argued*, That the father was here strictly debtor to his son, by uplifting the grandfather's legacy, *et debitor non præsumitur donare*; it was *answered*, That this presumption yields to a stronger of paternal affection; besides, that the