father or his creditors, puts it in the same case, as if the bonds had never been taken. No 36.

"THE LORDS found, That the sums in the bond taken payable to the father in liferent, and to the children of the marriage in fee, having been evicted for the father's debt, can be no implement of the provision to the children in the said contract."

Procurators and Clerk *ut supra*.

Fol. Dic. v. 2. p. 269. Bruce, v. 2. No 44. p. 59. & No 49. p. 65.

1726. *February* 4. GIBSON *against* ARBUTHNOT.

No 37.

BY contract of marriage, the husband became bound "to employ the sum therein named, and the conquest during the marriage, to himself and spouse in liferent, and to him, for the use and behoof of the children to be procreated betwixt them, in fee; which failing, &c." There being but one daughter of the marriage, who deceased before her father, after conveying her interest as only child of the marriage, a competition arose about the conquest, betwixt her disponee and her son, who took out brieves to serve himself heir of provision in his grandfather's contract of marriage. The LORDS found, That the husband being obliged to provide the conquest to himself, for the use and behoof of the children of the marriage in fee, he became thereby a trustee for behoof of his children; and that after dissolution of the marriage action was competent to his daughter's assignee; and therefore found there was no place for her son to serve heir of provision to his grandfather.

Fol. Dic. v. 4. p. 279. Home.

*** This case is No 162. p. 11481. *voce* PRESUMPTION.

1732. *February* 3. CAMPBELL *against* DUNCAN.

No 39.

IN a second contract of marriage, the husband and his heirs became bound, at the term of Whitsunday after the marriage, to employ a certain sum to himself and wife in conjunct-fee and liferent, and to the heirs and children of the marriage in fee. There was but one child of the marriage, a daughter, who, after assigning the provision to her husband, died, without making up any titles. In a pursuit at the husband's instance against the granter's representatives for payment, it was admitted for him, That had the father lent out the covenanted sum in terms of the contract, a service as heir of provision would have been necessary; but while the obligation stood unimplemented, the heirs and bairns were creditors. It is true, when this action is pursued against the father, it can