No 113. quisite *inter majores*, yet here she entered when minor, and continued long after the same. The Lords allowed aliment during all the years of her abode in his family, in respect it was begun in her minority, and she remained therein till she was 40 years old, but they modified the aliment for her and her husband to 250 merks *per annum*, though she had L. 10,000 Scots of portion.

Fountainhall, MS.

No 114.
A woman who had a small jointure, entertained her son, paid his prentice-fee and funeral expenses. In a suit at her assignee's instance against her son's heir, who was also his cousin, the Lords found that the presumption of entertaining *gratis* ceased here.

1697. *November* 17. Alison Gourlay *against* James Urquhart.

A mother entertains her son for several years, pays his prentice-fee, and when he dies minor she is at the whole expense of the funerals; and assigning her grounds of debt, the assignee pursues the next heir, for constituting these debts, to affect the heritage he might succeed to as heir to his cousin. It was *alleged*, Your cedent can never claim these as debts, seeing it is presumed that she alimented *ex pietate materna*, especially seeing she liferented her son's whole stock, and so *jure naturæ* was bound to maintain her own son. *Answered*, Where a mother has such a competent liferent as may maintain both herself and her children, there it may be rationally presumed, that she does it *gratis*, and by the natural obligation lying upon her to maintain and educate; but if it be such as can hardly maintain herself, as here all she possessed was allenarly four acres of land, paying L. 5 Sterling yearly, the presumption that she did it *ex pietate* ceases, and what she expended must affect the fee of the acres. It is true, there is a decision, 17th November 1680, Sandilands *contra* Telfer, *voce* Tutor and Pupil, where it was found, that a tutor could acclaim no more from his pupil but the annualrent of his stock, and they might not break on the fee; yet there it was not so strait a liferent but it might soberly aliment them both; which was impossible in this case. The Lords found the presumption of entertaining *gratis* ceased here. Yet if it had been betwixt the son and mother, there might have been more debate; but he who now fell into the fee of the acres, on her son's death, being a stranger to her, the Lords thought it hard to construct what she had furnished to her son as donation *quoad* him; seeing whatever she might have quit to her son, it is not to be presumed she intended also to gratify thereby his remoter heirs.

Fol. Dic. v. 2. p. 142. Fountainhall, v. 1. p. 795.

No 115.

1731. *February.* Creditors of Kimmerghame *against* Hume.

A Creditor in an heritable bond of L. 8000 Scots assigned the same to his debtor's daughter *in familia* with her father, the father having died bankrupt. In a competition between the young Lady and the personal creditors of the de-

funct, she was ranked, not only for her principal sum, but also for her bygone annualrents, which were found due, notwithstanding of the aliment bestowed upon her by her father in her minority; and the maxim, *debitor non præsumitur donare*, was not found to take place, in respect, 1*mo*, The bond did not come from the father; 2*do*, The *pietas paterna*; 3*tio*, That in his accounts, or any other way, he never expressed an intention to aliment her out of these annualrents. (*See* APPENDIX.) No 115.

Fol. Dic. v. 2. *p.* 142.

SECT. III.

Deeds in favour of Children or near Relations, whether presumed in satisfaction of former revocable settlements?

1623. *July* 24. STUART *against* FLEMING.

No 116.
A man executed a bond to his natural son for a sum, retaining it. He thereafter infeft him in an annualrent, redeemable for the same sum contained in the bond. As the one did not mention the other, found that both stood.

IN an action whereby ——— Stuart, natural son to umquhile James Stuart, Provost of Glasgow, pursued Eleming, relict and executrix to his said umquhile father, for payment of the sum of 400 merks, contained in a bond made by the father to the pursuer, which bore, to be granted by the father for love and favour of his son, and was delivered by the father to a third person, to be kept and delivered to the son after the father's decease. The defender compeared and *alleged* absolvitor, because that bond was fulfilled by the defunct giver thereof in his own time, in so far as the father, for the same cause of love and favour, had given to his son infeftment of an annualrent of 50 merks, redeemable by payment of the like sum contained in this bond, viz. 400 merks; and which annualrent was thereafter redeemed by the father, and the sum paid to the son; all which was done after the term contained in the bond now libelled; and therefore it must be esteemed an implement of this bond, being done after the term of payment appointed thereto, and the sum being alike, and the causes of both the securities one; and being done by the father to his son natural. This allegeance was repelled by the LORDS, and they found, that the posterior security took not away the first, seeing the last made had no relation to the first security, nor mentioned that it was given in satisfaction and fulfilling thereof, and that the last security was of a different nature from the first, being an infeftment of annualrent of 50 merks; and that the first bond was consigned by the father to the son's use, which he might have recalled, and taken back in his own time; and not doing the same, it behoved to remain an effectual security to the son, seeing both the securities might sub-