

No 124. ther at her own or her husband's decease; and in Lawrie's, she renounced the claim of her nearest of kin.

The LORDS refused the bill.

Fol. Dic. v. 4. p. 122. D. Falconer, No 151. p. 193.

* * Kilkerran's report of this case is No 30. p. 2274, *voce* CLAUSE.

1750. July 6.

Lady DUNNIPACE, and TAYLOR, her Trustee, *against* WATSON and VERT.

No 125.

A wife having buried her husband, when no funds appeared, was found preferable on a fund afterward emerging, it not being presumed she did it *animo donandi*.

THE Lady Dunnipace was at the charge of burying William Innes, her husband, when it was by every body believed he had not a sixpence of his own in the world; but, some years thereafter, a sum cast up, till then unknown, viz. a legacy that had been left to him by Doctor Fraser, which came to knowledge by a multiplepointing raised by the Doctor's Executors; and that sum having been confirmed by the defunct's Executors, the Lady brought an action against them before the Commissaries, for the funeral expense, and other privileged debts, paid by her.

Their defence was, That these expenses had been laid out by her *animo pietatis*, and as her *animus* must be judged of as at the time they were laid out, she could not retract upon this posterior discovery; which the Commissaries "Repelled; and found the defenders liable for the sum, as by them modified;" and the LORDS "Refused a bill of advocacion."

It was not thought to follow, that, because the Lady had not allowed her husband to lie unburied, therefore, she had renounced all claim for the expense upon his effects which she might happen to discover.—*See* PRIVILEGED DEBT.

Fol. Dic. v. 4. p. 122. Kilkerran, (PRESUMPTION.) No 7. p. 430.

* * * D. Falconer reports this case :

1750: July 7.—WILLIAM TAYLOR, Writer to the Signet, dying without any apparent funds, the Lady Dowager of Dunnipace, his relict, defrayed his funeral expenses; and there afterwards appearing a fund of a legacy which had been left him, and was confirmed by his creditors, she, by her assignee, William Taylor, writer in Edinburgh, obtained a decret of cognition, and pursued the Executors for this privileged debt; in which the Commissaries found them liable; and the Lord Ordinary on the Bills refused an advocacion.

Pleaded in a reclaiming bill; She having buried her husband, when no funds appeared, is presumed to have done it *ex pietate*, and cannot retract her resolution, and make a demand upon the executor.

Answered; She could not determine whether she would claim or not, till she saw a fund, and then she immediately brought her action. No 125.

THE LORDS adhered.

Act. H. Home.

Alt. Millar.

D. Falconer, v. 2. No 145. p. 171.

1751. November 29. FIFE against NICOLSON.

No 126.

A BOND from a father to his daughter, in full of what she could ask as legitim, or any manner of way, was found to be in lieu of a sum left her, with which he had intromitted.

Fol. Dic. v. 4. p. 122. Falconer.

* * This case is No 52. p. 2309. *voce* CLAUSE.

1757. December 1. GORDON against Major MAITLAND.

No 127.

A BROTHER *pleaded*, That no interest was due to his sisters upon their bonds of provision, as they had lived in family with him, and had been alimented by him, *nam debitor non præsumitur donare*.—THE LORDS found, that their aliment was to be deducted from the interest of their bonds; and they modified the said aliment to two-thirds of the current annualrents of their provisions.

Fol. Dic. v. 4. p. 121. Fac. Col.

* * This case is No 359. p. 11161. *voce* PRESCRIPTION.

1766. November 20. MARGARET MATHIESON against JOHN MATHIESON.

No 128.

JOHN MATHIESON elder, being possessed of an estate limited to heirs-male, became bound, by his marriage-contract, to pay "to the eldest or only daughter to be procreated of the marriage," the sum of 6000 merks, in the event that there should be no heir-male of the marriage; or, if such heir-male should exist and succeed to the estate, the sum of 4000 merks.

An after-provision to children imputes in former provisions, though not purified at its date.

In either event, he became bound "to maintain and educate the eldest or only daughter to be procreated of the said marriage, conform to her degree and quality, till she be married."

Four daughters existed of the marriage, but no male issue. During its subsistence, Margaret, the eldest daughter, was married; and John Mathieson became bound to pay her 3000 merks, without any reference to the obligation to his own contract of marriage.