

*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.