

No 546.

Alexander Geddes, after his father's death, being advised to challenge these deeds, as granted *adulterii causa*, executed a trust-bond in favour of Allan Clark; who, after deducing an adjudication on it, brought a reduction of the settlement.

In defence, it was stated by Jean Bull, That Geddes was a natural son, and consequently had no title to pursue.

Mr Geddes averred, That his father and mother had been received as husband and wife by their friends in Scotland; and produced, in evidence of the celebration of their marriage, a notorial extract of its entry from the register of marriages kept by the person who performed the ceremony, an Episcopal clergyman in Haddington, who is since dead.

THE LORD ORDINARY, "in respect the pursuer alleges, that he is the lawful son and heir of his father, and that the defender contests his legitimacy, finds the pursuer, before further procedure, must instruct his legitimacy."

In a reclaiming petition, the pursuers

*Pleaded*; Mr Geddes has produced *prima facie* evidence of his legitimacy, which was more than he was bound to do; for as bastardy is not presumed, Stair, b. 3. tit. 3. § 43.; 19th February 1669, King's Advocate against Craw, No 541. p. 12367.; 6th January 1680, Sommerville, No 544. p. 12638.; the defender, before she is entitled to insist in her present defence, must establish it in a regular process of declarator. The *onus probandi* lies upon her, nor can she be relieved of it merely by making a vague allegation in this action, that the pursuer is not legitimate.

*Observed* on the Bench; The evidence of the marriage of the pursuer's parents, hithero produced, is not complete; and an adjudication upon a trust-bond being obtained, without any evidence of propinquity, the pursuer must support his title by proof.

The COURT refused the petition.

Lord Ordinary, *Dregborn.* For the Petitioners, *Rolland.* Clerk, *Sinclair.*  
R. D. *Fac. Col. No 205. p. 488.*

## S E C T. II.

## Death.

No 547.

1613. June 17.

A. against B.

A WOMAN, being charged by the Commissary of Dumfries to confirm her husband's testament, sought advocation, *alleging*, That her husband was not

known to be dead, without probation whereof she could not be compelled to confirm. THE LORDS advocated the matter, and ordained the woman to find caution to make the gear furthcoming, and in as good case as they were the time of the edict, in case it be proved, that her goodman was dead; because it was affirmed, that her husband being a merchant, and having made sail three years ago, neither ship nor men were returned, but were reputed perished, and many of the rest of the merchant's testaments were confirmed.

No 547.

*Fol. Dic. v. 2. p. 263. Haddington, MS. No 2496.*

1615. *January 18.* LAIRD OF LEE *against* TENANTS OF CARSTAIRS.

IN an action betwixt the Laird of Lee and the Tenants of Carstairs; the LORDS found a reply founded upon the decease of James Hamilton of Abendale, proved by their own knowledge, *tanquam notorium.*

No 548.

*Kerse, MS. fol. 254.*

1622. *June 27.* ERSKINE *against* STEVEN.

VITA præsumitur nisi mors probetur, ordinarie, yet a pregnant presumption to death, viz. that the person alleged to be dead embarked in a ship to make a voyage to Norway at All-hollowmas 1620, and that the ship nor none in her ever returned, nor was heard of, and so behoved to have perished in the ship, will be found relevant.

No 549.

*Fol. Dic. v. 2. p. 263. Haddington. Durie.*

\* \* \* This case is No 323. p. 11656, *voce* PRESUMPTION.

1670. *February 18.* WILLIAM LAURIE *against* SIR JOHN DRUMMOND.

UMQUHILE Sir Robert Drummond of Meidup having disposed the lands of Scotstoun to Sir John Drummond of Burnbank, Mr John Drummond, writer in Edinburgh, his grand nephew, intending to reduce that disposition as on death-bed, grants a bond to William Laurie of 12000 merks, who thereupon having charged the said Mr John to enter heir in special to the lands of Scotstoun, to the said Sir Robert his granduncle, apprises from him all the right of the lands, that might be competent to him, if he were entered heir, and thereupon raises reduction of Sir John's right, as being granted by Sir Robert on death-bed, in prejudice of his nearest heirs, in whose place the pursuer now is by the apprising. It was *alleged* for the defender, No process upon any charge to enter heir against Mr John Drummond, because he is not the nearest

No 550.

Death of a person instructed by 18 years absence, and a letter from a person who was a witness of his death.