

father in his contract of marriage. ALLEGED,—Posterior to that obligation the father took a bond for 1700 merks to himself in liferent, and you in fee, and which must be ascribed in part of payment of the debt he was then owing you; seeing *debitor non præsumitur donare*. ANSWERED,—That brocard takes not always place, and is elided by stronger presumptions. And here the sum of the contract of marriage was suspended during the father's life; and so this substitution cannot be in implement thereof, because that were to make him pay before the term. This the Lords repelled, because both of them had one term, *viz.* the father's decease.

The *second* qualification was, That, as his father's estate increased, so he augmented his children's portion, and gave the other two more than this son; and, if this be not construed a gift, then he would not get any thing but just what was provided in his contract; and the rest would be more unequally provided than he; and, this being *conjectura de voluntate defuncti*, he lived many years after this; and, if he had designed it for payment, he would have by some writ declared so. The Lords, in this circumstantiate case, found it ought to be esteemed a distinct liberality and donation, and not to be imputed in payment of the preceding debt; but ordained the circumstances to be engrossed in the interlocutor, that it might not enervate the maxim founded on the presumption in other cases.

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1694. December 28. STEWART *against* The TOWN of PAISLEY.

RANKEILER reported the poor woman Stewart against the Town of Paisley. The Lords read the Act of Parliament; and found it was but a private act, and fell under the act *salvo jure*; and, though it gave them the privilege of the royal burrows to cite heritors of decayed tenements, within a year, to rebuild them; and, if they failed, then to appreciate, and either reëdify them, or sell them to such as would: and therefore reponed her to her right; but the purchaser, who, on the faith of that act, had built, would get back his price, and allowance for all his meliorations. Some of the Lords thought she should have been first burdened to prove the two allegeances she founded on:—*Imo.* That the year and day when she was cited could not run against her, because she was then in Londonderry, and, being besieged, it was an insuperable impediment; *2do.* That the Magistrates were *in dolo*, having sold it much cheaper than might have been got for it; and having concealed and kept up 250 merks of the price they received, like Ananias and Sapphira. But the plurality would not put her to that trouble and expense.

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1694. December 28. MR JAMES and ALEXANDER LUNDIES *against* ALEXANDER TROTTER.

THE Lords opened the decret of count and reckoning, upon this nullity, That the decret bore that the term was circumduced against Lundy for not proving the whole sum of the wadset was paid to Trotter's creditors conform to