

1728. December 26. M'KENZIE against TOWN OF BURNTISLAND.

No 90.

A PENSION of 40 merks *per annum* being established by an act of a Town Council in favour of an Advocate, a process for payment was raised against the present Magistrates by his Representative. The defence was, Lawyers' and Physicians' honoraries are presumed to be constantly paid, neither is it usual to report discharges in cases of this nature;—which the LORDS repelled. See APPENDIX.

*Fol. Dic. v. 2. p. 140.*

1755. February 7.

DOCTOR PARK against REPRESENTATIVES OF LANGLANDS.

No 91.

DOCTOR PARK, son-in-law to Langlands, pursued his Representatives for furnishings and attendance, as surgeon and physician to the defunct's family, during many years; and, particularly, for his own attendance on Langlands during his last sickness, which lasted for above seven months.

Physicians fees are presumed paid, except during the last sixty days of the deathbed sickness.

Among other things, *objected* by the Representatives; That, with respect to the fees stated for attendance as a physician, these are presumed paid at the time of the attendance, except for the attendance of the last 60 days in the deathbed sickness, according to a decision, Doctor Russell against Sir James Dunbar, (*supra*,) and according to the reasoning in two other decisions, Johnston against Bell, (*supra*,) and M'Kenzie against Town of Burntisland, (*supra*,)

*Answered* for Doctor Park; The honoraries of physicians may be presumed paid at the time of attendance, where the physician and patient are strangers to each other; but that presumption does not take place where the parties are nearly connected together; in that case, it is not probable the fees would be paid with the same regularity with which they are in use to be paid to a stranger.

“THE LORDS found, That the fees stated by the pursuer, as a physician, are presumed to have been paid, except during the deathbed sickness of the defunct, which they modified.”

*N. B.* The interlocutor did not express whether fees were presumed not paid during the whole of the last sickness, or only during the last 60 days of it; but the sum modified was so small, that the last seemed to be implied.

For Doctor Park, *Brown, J. Dalrymple.*

*Alt. W. Wallace, Miller.*

*J. D.*

*Fol. Dic. v. 4. p. 121. Fac. Col. No 134. p. 201.*