

in that claim, (for the bond is abstracted and amissing,) and the complaint served on Stewart who was prisoner in the castle. The petitioners moved to have him examined in presence, which Mr Lockhart for the prisoner opposed as incompetent after the trial had so far proceeded as to serve him with the complaint, to which he had put in answers. That question was this day argued at the Bar, and pretty fully on the Bench, when Justice-Clerk and I were clear that the examination was competent, for reasons that I have mentioned on the back of the complaint. But the Lords wanted to see a precedent quoted from the Bar in the case of Fitzgerald in 1746 which would have delayed it. Mr Lockhart, since the Court he thought seemed inclined to admit the examination, therefore in name of the pannel passed from the objection, and agreed to submit to the examination,—and he was examined accordingly.

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### FUNERAL CHARGES.

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No. 1. 1735, July 24. DR LEARMONT *against* WATSON of Saughton.

See Note of No. 3. *voce* COMPENSATION.

No. 2. 1742, June 29. ROWAN *against* BARR.

THE Lords found funeral charges preferable to landlord's hypothec for rent, agreeably to L. 14. § 1. L. 45. Digest. *De Re et Sump Fun.*

No. 3. 1749, July 26. PETERS *against* MONRO.

THIS was a competition betwixt funeral charges and medicaments on death-bed, which of them were preferable, there not being sufficient subject, at least in this country, to pay both. The Commissaries preferred the funeral expenses; and on a bill of advocacy for Mr Monro, the case was reported by Lord Easdale. I thought the funerator preferable agreeably to the civil law, but the Lords found them preferable *pari passu*.

No. 4. 1752, Dec. 23. A. *against* B.

LOLD JUSTICE-CLERK reported a case for advice, Whether creditors for a wife's funeral charges have a preference in the husband's effects to his other creditors? We were no quorum, and therefore could not decide it, but both President and Justice-Clerk thought they had. But I thought, though the husband was liable, yet the law gave no preference on any effects but those belonging to the defunct, which did no hurt to commerce, whereas the other would go great hurt, and extend to parents and children as well as husbands and their heirs. *Vide* Newton, Decision 1, (Dict. No. 127. p. 5924.) The President agreed as to funerals of children, and they seemed to found their opinion on the supposed or rather imaginary opinion of a communion of goods. But what would be the case of other communions, as of societies or corporations?