

1726. July.

HAWTHORN *against* URQUHART.

No 11.

THE LORDS would have found it relevant to assoilzie the defender, that the goods were gifted to him by the person who took them off for his behoof; but as *donatio non præsuntur*, he was found liable, in respect he could bring no evidence of the alleged donation. See APPENDIX.

Fol. Dic. v. 2. p. 317.

1728 November 29. TRAIL of Sabae *against* MOODIE.

No 12.

A wife having a liferent, constituted by locality, was induced to consent to several heritable debts, contracted by her husband, whereby her liferent, after his death, became in some measure ineffectual; upon this the question arose, Whether the relict had recourse against her husband's heir, in so far as she was prejudged, by yielding preference to her husband's creditors? That a recourse was competent, was argued from the nature of the transaction, that, by the wife's consent to the preference of the creditors, no simple or absolute gift was designed, either to the husband or his creditors; that nothing was intended further than to grant a security to the creditors; it was the same with respect to the husband, whether this was done, as in the present case, by consenting to a preference, or if she had directly impignorated her liferent lands; and, therefore, from the nature of the thing, that recompense is due. THE LORDS found, That the liferentrix had a competent action against the heir of the husband for the damage she sustained for the want of her liferent, by consenting to the preference of her husband's creditors. See No 9. p. 13405.

Fol. Dic. v. 2. p. 317.

1738. January 4.

TRUSTEES of Colonel JOHNSTON'S CREDITORS *against* The CREDITORS.

No 13.

A GENTLEMAN incumbered with debts, having conveyed his effects to certain trustees, for the use and behoof of his creditors, and they having accordingly entered upon the management, and converted the effects into money, in a compt and reckoning betwixt them and the creditors, the LORDS found, That trustees are not entitled in law to demand any fee or reward for their pains. See APPENDIX.

Fol. Dic. v. 2. p. 317.