

1699. *January 4.* EARL CRAWFORD *against* BRUCE.

No 293.

IT being *alleged* that the minute of a decret-arbitral was not subscribed within the time to which the submission was limited; found, That the date of the minute at the top must be presumed to be the date of the subscription, unless it were redargued, since omnia præsumitur solenniter acta, & interpretatio sumenda est ut actus valeat.

Fol. Dic. v. 2. p. 161. Fountainhall.

. This case is No 48. p. 649. *voce* ARBITRATION.

1711. *February 11.*

MARGARET CARNEY, Relict of Mr JOHN RAMSAY, Doctor of Medicine, *against* JAMES COWPER of Lochblair.

No 294.

JAMES COWPER of Lochblair being decerned in July 1697 as cautioner for Mr John Ramsay, schoolmaster in Perth, executor confirmed to Doctor Ramsay, to pay to Margaret Carnegy his relict an annuity of 600 merks, conform to her husband's testamentary provision, till 7000 merks, which Lochblair was found to have had of the defunct's effects at Martinmas 1688, and the annual-rents thereof from that term were exhausted; Margaret Carnegy charged Lochblair upon the decret for her annuity from Whitsunday 1708 to Whitsunday 1709, who suspended upon this reason, That the fund thereof was exhausted, and he could be no further liable. For proving exhausted, the suspender produced the charger's discharge of the 600 merks from Whitsunday 1706 to Whitsunday 1707, and for all years and terms preceding.

A discharge of an year's annuity, and all years preceding, imports not a presumption that the same was paid yearly when it fell due, but that all was paid at the date of the discharge, unless the debtor instruct the particular times when the respective payments were made.

THE LORDS found, That the said discharge doth not import a presumption that the annuity was yearly paid when it fell due, but that all was paid at the date of the discharge, and ordained the count and reckoning to proceed accordingly, unless the suspender instruct the particular times when the respective payments were made.

Fol. Dic. v. 2. p. 161. Forbes, p. 494.

1756. *March 9.*

WALTER RUDDIMAN, Printer in Edinburgh, *against* The GOVERNORS of the Merchant Maiden-Hospital in Edinburgh.

No 295.

UPON the 21st of October 1689 Thomas Young granted bond for 4000 merks to his mother Alison Elliot. This bond proceeds on a narrative of onerous causes.

The granter of a deed, having been buried four days after its date, the deed was presumed to

Ruddiman acquired right by progress to this bond; and in the 1742 insist-

No 205.
have been
executed on
deathbed, un-
less the per-
son who
founded on it
could prove
liegie poustie.

ed in an action for payment against the Hospital, who had succeeded to the estate of Thomas Young in virtue of a gratuitous disposition from one of his representatives.

Various defences offered for the Hospital were repelled on the 25th of June and the 30th July 1746. It was now *objected* for the Hospital, That it appeared by the register of burials in Edinburgh, that Thomas Young was buried on the 25th of October 1689, being the fourth day from the date of the bond; that therefore the bond must be presumed *post tantum temporis* to have been granted on deathbed, unless the pursuer remove this presumption, by proving that Thomas Young was in health when when he granted the bond, or that he died suddenly, or of a violent death.

THE LORDS found, That it is to be presumed that the bond was granted by Thomas Young on deathbed; and therefore that it cannot affect the defenders, unless it is proved, that he was *in liegie poustie* at granting the same, or that the onerous cause of the bond be instructed.

Act. *Ferguson*. Alt. *J. Craigie*. Reporter *Justice Clerk*. Clerk *Gibson*.
D. Fol. *Dic. v. 4. p. 128.* Fac. *Col. No 191. p. 299.*

DIVISION XIII.

Acts and Deeds are presumed to have been done according to what is common and customary.

1617. February 7. DOUGLAS against NAPIER.

No 296.

IN an action betwixt James Douglas, donatar to the gift of liferent of Christian Herring, Lady Lauriston, against Sir Alexander Napier, the LORDS found that it was enough to the King's donatar to prove that the liferent of the lands of Lauriston was reserved in Sir Alexander Napier's contract; which reservation made her liferenter, and by her rebellion her liferent pertains to the King, except it was alleged that she held of another superior nor the King. *Item*, It was found that a sasine given *propriis manibus*, by her husband, or given upon his precept, was sufficient to elide the presumption, except the donatar would say that she was infest to be holden of the King's Majesty.

2.

Fol. *Dic. v. 2. p. 162.* *Kerse, MS. p. 228.*