

On 16th June 1774, "the Lords adhered as to title, but altered as to the merits, and repelled the reasons of reduction."

Act. Ilay Campbell, &c. *Alt.* H. Dundas, &c.

Diss. Alva, Coalston, Hailes.

1774. August 6. JEAN STEWART *against* SAMUEL M'KEAND.

PRESUMPTION.

Whether the oath of a person sued for the aliment of a bastard child, acknowledging that he had carnal knowledge of the mother, eleven calendar months preceding the day fixed on in the libel as the child's birth-day, but not posterior to that period, affords a proof of his being the father of that child.

[*Faculty Collection*, VI. 349 ; *Dictionary*, 11,664.]

HAILES. The character of this pursuer puts her out of the case determined in *Freisland* very favourably to the woman from an opinion of her character. She was *probatis moribus et pudicitia minime suspecta*. The pursuer's character is just the reverse. I do not know any well-vouched example of a woman going with child for eleven calendar months. It is said that there are many examples in Galloway; but all this is a delusion. Women suppose that they are not with child while the catamenia flow: they consider the contrary as a sign of conception, but these are popular errors. Besides, Judges must determine by general presumptions. The Court sometimes found that life was presumed for 100 years. This has been departed from in later practice. But suppose that such was still the course of decisions, Could it be pleaded that life is to be presumed for 152 years or 167 years, because Parr lived to be 152, Jenkins to be 167?

KENNET. The woman was sensible of the man's not having had carnal knowledge of her within the eleven months: she is therefore obliged to have recourse to an extraordinary hypothesis. In warm countries women are sooner ripe; but I never heard till now that in cold countries women went longer with child.

PITFOUR was for allowing some latitude to the fair sex.

PRESIDENT. There might be a difficulty if there were *justæ nuptiæ*. I never saw a case where a woman asserted that the child remained eleven months in her belly.

AUCHINLECK. I incline, in general, to bring in the man on such occasions, because dealers in that way are bad chronologers; but *here* the chronology is fixed, and the woman is of a loose character.

ELLIOCK. Are we to presume so extraordinary a thing as that a woman should go eleven calendar months?

ALVA. This is not a case in which we ought to quit *probabilities* for *possibilities*.

On 6th August 1774, "the Lords assoilyied."

Act. A. Crosbie. *Alt.* Ilay Campbell.

Reporter, Coalston.