

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.*