

No 553. death, which amounted to this, that the clerk and book-keeper of the East-India Company at London, deponed, That one Alexander Home was hired to go in their ship to their factories at Bengal in 1687, and that they had heard no more of him afterwards, but only find his name recorded in their books; and that Isabel Hogg, as his widow, applied to the managers of said Company, and got money from them as a part of his wages, and that the wardens and constables of Duke's Place in London, hearing of his design of going that voyage, arrested him, till he found caution that his wife and children left behind him, should not be a burden on the parish, and that he was commonly holden and reputed to be dead. *Answered*, The witnesses acknowledge that they did not know him, and so it might be another man, seeing their might be several Alexander Homes, and her application as relict was but her own assertion. THE LORDS thought, where one is alleged to have died on the other side of the equinoctial line, and after 19 years absence, there could no full probation be got, and therefore found it sufficient to this effect, to make Whitefield deponed, what was his brother's portion, and if it be in his hands, or if he intermeddled therewith? and assigned a day for him to compear and exhibit, if he had writs that belonged to his brother, for clearing what his patrimony was, and if he had any bond of provision settled on him by his father. For where persons die in places so remote, there cannot be got a demonstrative probation, but *probatio semiplena et conjecturalis*, upon holden and reputed; and such like presumptions must be taken, otherwise it can never be proved.

*Fol. Dic. v. 2. p. 264. Fountainhall, v. 2. p. 335.*

No 554. 1707. December 4. AITKEN against GUIDLETS.

THE LORDS presumed a son to be dead, from his father burthening a disposition of his estate with his other childrens' provisions, without mention of his, and from this, that the father in a pursuit against him for what belonged to the son, upon the pursuer referring to his oath, that he was dead, acknowledged that he feared the worst.

*Fol. Dic. v. 2. p. 264. Forbes:*

\* \* This case is No 110. p. 5553, *voce* HERITABLE and MOVEABLE.

1710. December 20.

WILLIAM HENDERSON, Merchant in London, and ELIZABETH INNES, his Spouse, *against* THOMAS MORTON in Rechlays, and JOHN SMITH, Writer in Cowper.

IN the action at the instance of William Henderson and his spouse against Thomas Morton and John Smith, as havers of the effects of Thomas Gourlay mariner, who had legated and assigned to the pursuers L. 150 Sterling, in case

No 555.  
Affidavits as-  
serting the  
death of a  
person, found  
to afford pre-  
sumptive  
evidence.