

No 139. THE LORDS, on report of the Lord Ordinary, 'found that Mrs Hay was not barred from claiming her legal provision of terce by the bond of annuity above mentioned.'

Lord Reporter, *Branfield*. For Douglas, Heron, and Company, *Blair*. Alt. *Wight*,
Clerk, *Robertson*.

S. *Fol. Dic. v. 4. p. 124. Fac. Col. No 116. p. 181.*

S E C T. V.

Deeds in favour of a Wife or Children, whether presumed in satisfaction of Debts due to him.

1594. February 15. KYLE against LOGAN.

No 140.

Deeds granted in favour of a wife are, in general, presumed to be in implement of claims upon her contract of marriage.

ANE auld man called Kyle pursued ane woman called Elspeth Logan in Restalrig, to infest him in twa acres of land in Restalrig, conform to an obligation made to him be her father, to whom she was aire. It was *alleged* be the defender, That she aucht to be assoilzied, because her said umquhil father, within twa months after the date of the said obligation, infest this pursuer in twa acres of his lands in Restalrig, and sua behoved to be interpret *in duriozem sortem*, and to have been done for implement of the said obligation, unless the pursuer were able to verify another cause thereof; whilk allegiance the Lords fand relevant, albeit the infestment had na relation to the said obligation.

Fol. Dic. v. 2. p. 145. Haddington, MS. No 506.

1611. January 25. COMMON SEAL against TRAIL.

No 141.

In conformity with the above.

A MAN being bound by contract of marriage to bestow a sum of money upon land or annualrent to his wife in liferent, and thereafter conquest an house to himself and her in conjunct-fee; albeit that infestment make no relation to the contract of marriage, yet it will be interpret to satisfy the same *pro tanto*, not according to the price which he gave for the heritage, but as the yearly mail and duty of it may correspond to the profit of the principal sum of the wife's tocher-good, at the annualrent of ten for the hundred.

Fol. Dic. v. 2. p. 145. Haddington, MS. No 2111.

*** In conformity to the above were decided the cases Muirhead against Daniston, No 360. p. 6152. *voce* HUSBAND and WIFE ; and Blair against Hamilton, No 325. p. 6110. *IBIDEM.*

No 141.

1614. December. RELICT of CRAWFORD *against* CRAWFORD.

THE relict of James Crawford in Broughton pursued David Crawford as cautioner for James, to infest her in 400 merks yearly that the defunct had infest her in victual, exceeding the avail of the said 400 merks yearly. She *answered*, That it was not in satisfaction of her former contract, and so could not take it away. THE LORDS found, That it behoved to have been given rather *animo exonerandi quam donandi*, and so behoved to be interpreted *in duriolem sortem*; and likeways, in an action pursued by Daniston, relict of Mr James Muirhead, minister, against George Muirhead, No 360. p. 6152. for infesting her in an annualrent according to her contract of marriage, he suspending that she was infest by her husband in more than the contract bore ; and she answering it was not in contentation of her contract ; the LORDS found that it behoved to be interpreted in contentation of the contract.

No 142.

Found in conformity with the above cases.

Fol. Dic. v. 2. p. 145. Haddington, MS. No 2584.

1632. February 17. KINNAIRD *against* YEAMAN.

AN infestment granted by a husband to his wife, presumed to be in implement of a clause in their contract of marriage, obliging him to lay out a certain sum for her liferent provision, though the infestment bore no sort of relation to the contract.

No 143.

Fol. Dic. v. 2. p. 131. Durie.

*** This case is No 40. p. 5469.

1661. November 19. FLEMING *against* GIBSON.

A RELICT, executrix to her husband, and thereby debtor to her children in their provisions constituted by the defunct, lent out a sum of money, in the name of two of these children, only payable to herself in liferent, with a substitution of one of these children to the other, failing heirs of their own body ; and failing all these, to the mother herself and her heirs. In this case, the bond was found to be in satisfaction of the bairns portions *pro tanto*, and a donation *pro reliquo*, though it was *argued*, That parents, bestowing sums for the use of their bairns, are presumed, from natural affection, to do it *animo donandi*,

No 144.