

legally compelled to grant the same, in so far as, by his contract of marriage, Lieutenant-General Baillie was obliged to infeft the said William Baillie in an annualrent out of his lands, for security of 40,000 merks; in which contract by the general clause in the beginning thereof the whole contract proceeds with the mutual consent of Lieutenant-General Baillie, and James Baillie his son, thereafter Lord Forrester; and a disposition of annualrent *de presenti*, with consent of any other party, would carry that consenter's right, and oblige him to grant infeftment; so the obligation of one, with consent of another to grant such an infeftment, doth oblige that consenter to grant the same. It was *replied*, that though special obligations to infeft in particular lands, anterior to inhibitions, hinder the party inhibited to perform *in forma specifica*; yet here the obligation by Lieutenant-General Baillie was only general, and his son's consent can only import *non repugnantiam*, but could never compelled him to grant the infeftment himself. *3tio*, The Lieutenant-General's obligation was to infeft in an annualrent, and his son's infeftment was a wadset in the property. It was *duplied*, that the wadset is expressly in implement of the Lieutenant-General's obligation, for securing William in an annualrent of 40000 merks, and the wadset is for the same cause, and to the same effect, bearing a proper wadset with a back-tack.

THE LORDS found, that the general consent to the contract of marriage, containing an obligation by Lieutenant-General Baillie, to infeft William Baillie in an annualrent effiering to 40000 merks out of the lands, was sufficient to oblige James his son consenter, getting right to all his father's lands, to fulfil that obligation; and that the wadset being granted expressly in implement of that obligation, albeit general, and not in the special terms of an annualrent, could not be reduced upon the prior inhibition against the said James.

*Fol. Dic. v. 1. p. 474. Stair, v. 2. p. 881.*

1681, December 1. PITTARROW against ARBUTHNOT.

THE debtor in a personal bond anterior to another creditor's inhibition, having corroborated the same by a new bond after the inhibition, accumulating bygone annualrents, and containing a precept of sasine, on which infeftment was taken; the LORDS reduced the infeftment *ex capite inhibitionis*, in respect the creditor was under no prior obligation to infeftment, but only to pay; but sustained the corroboration for a personal security as to the accumulation.

*Fol. Dic. v. 1. p. 474. HARCARSE (INHIBITION.) No 628. p. 173.*