

1686. February 2. Mr ROBERT SELKIRK *against* CATHARINE INGLIS.

No 147.

ROBERT SELKIRK, who, in his contract of marriage, provided, That 3000 merks should return to his wife, failing children, *stante matrimonio*, provided her to 6000 merks, in case of no children; and thereafter took bonds for several sums, payable to him and her, and the longest liver, and to the bairns, &c.; which failing, to her heirs and assignees. The wife having claimed the 6000 merks bond, and also the sums in the other bonds, by virtue of the substitution, it was *alleged* for the heir and nearest of kin, That *debitor non præsumitur donare*.

Answered; That brocard holds not between a husband and his wife.

THE LORDS sustained the brocard, and found the substitution in the other bonds was in implement of the 6000 merks.

Fol. Dic. v. 2. p. 146. Harcarse, (BONDS.) No 209. p. 47.

1706. June 25. DAVIDSON *against* RENDAL.

No 148.

A PARTY in his contract of a second marriage having provided a certain sum to the children thereof, and long thereafter giving a bond of provision to the only child that existed of that marriage; the LORDS, in a reduction of an adjudication led for both the sums, found, That the last bond was in implement of the contract of marriage, and that they were not both due, and therefore restricted the adjudication to one of the sums and its annualrents.

Fol. Dic. v. 2. p. 144. Fountainball.

. This case is No 37. p. 6966.

1708. November 16.

Dame ANNA HOUSTON, and the LORD JUSTICE CLERK, Her Husband, for His Interest, *against* JOHN HAMILTON of Bangour.

No 149.

THE deceased Sir William Hamilton of Whitelaw having, in his contract of marriage with Dame Anna Houston, "obliged himself to employ 60,000 merks Scots upon annualrent, or other sufficient security, to himself and her in conjuncture and liferent;" and thereafter, by a bond "obliged his heirs not of his own body, for important causes and considerations, to pay to her L. 7000 Sterling; the said Dame Anna Houston and the Lord Justice Clerk, her present husband, for his interest, pursued John Hamilton of Bangour, as representing the said Sir William Hamilton, to implement the provision in the foresaid contract of marriage.

Alleged for the defender; No process could be sustained on the contract, be-

A person who stood obliged to provide his Lady, by their contract of marriage, to a certain liferent annuity, having granted her a bond, bearing important causes, for a sum payable by his heirs not of his own body, the