

No 10.

These authorities afford a sufficient answer to the defender's plea; and the principle upon which the rule is founded is well known. Nor is there any thing peculiar in the present case. Every bond carries interest from the period advancing the money, unless there be some special clause to the contrary; and it makes no difference, that here the interest run from the term before the father's death, still no interest was payable till the following term; and, at any rate, it is not the term of payment of the interest, but of the principal, that is considered.

To the 3^d; The decisions referred to, were all given in the case where a marriage-contract had intervened; but, when a woman marries without a contract, she betakes herself to the legal provisions, which she can only claim out of the free effects of her husband, after his debts are paid; and the same thing applies to the claim of retention for her aliment.

The case of Ogilvy *contra* Scot was of a very singular nature, and Lord Harcarse, who collects it, *voce* CONTRACTS OF MARRIAGE, seems to think, that the doctrine can only apply to the case where the father is the party contractor. See Div. 3. Sec. 4. *h. t.*

THE LORDS 'found the bond moveable, but allowed retention of the interest which fell due, during Margaret Philp's life.'

Act. *Miller Advocatus, Macqueen.*

Alt. *Lockhart, Sir David Dalrymple.*

G. F.

Fac. Col. No 5. p. 204.

S E C T. II.

Bonds containing Substitutions.—Bonds bearing Annualrent.—Bonds having clauses of Infeftment.—Bonds assigned before Marriage, though not intimated.—Bond to the Widow's Fund.—Arrears of taxes due by a Minister.

No 11.

A bond to a person, whom failing, by decease, to another *nomi-*
natum, belongs solely to the substitute, and the heir's relict can have no share of it, even though the institute die before the term of payment.

1630. *January 15.* THOMSON *against* MERKLAND.

THE relict having charged for a third of a moveable sum, appointed by the bond to be paid at a term to the creditor, her husband, and in case of his decease, to a person who was his son, therein named, specially the husband creditor having deceased before the term;—it was found, that this, and the like substitutions and provisions to bairns by bonds, in case of the creditor's decease, doing nothing in his lifetime to change the bond, should stand; and that the sum pertained to the person substitute; and that the relict had no part in such sums, nor yet the defunct's executors; and if, at any time, sums be owing by such bonds, and should be ignorantly confirmed, (as this is confirmed), yet the confirmation thereof, where nothing was altered by the defunct, nor nothing mentioned by the defunct's self in testament to declare the change of his mind,

should no ways prejudice the person substitute ; but here the creditor died before the term.

No 11.

Act. *Lermonth.*

Alt. ———.

Clerk, *Scot.**Fol. Dic. v. I. p. 385. Durie, p. 481.*

* * * Kerse reports the same case :

BOND to a father, and failing of him by decease, to his son, albeit the father died *ante terminum*, found sufficient to exclude the relict from the third of that bond.

Kerse, MS. fol. 65.

1663. June 24. SCRIMGGEOR *against* MURRAY.

No 12.

A BOND bearing annualrent and obligation to infest falls not *sub communionem*, nor will the relict have any part thereof.

Fol. Dic. v. I. p. 385. Stair.

* * * See this case, No 7. p. 464.

1665. June 28. JAMES PITCAIRN *against* ISOBEL EDGAR.

UMQUHILE David Edgar, by his contract of marriage, provided 4000 merks to be paid by him and his heir of the first marriage, which failing, any other his heirs, to the bairns of the second marriage ;—the portion of the daughters payable at their age of 18, and the sons at 21, with five merks yearly of annualrent after his death, for the children's subsistence. Isobel, one of the children, having married after her father's death, James Pitcairn, her husband's creditor, pursues for the sum as belonging to the husband *jure mariti*. It was *answered*, That the sum was heritable, bearing annualrent, and the term of payment of the annualrent was come before the marriage, and therefore it did not belong to the husband *jure mariti*. It was *answered*, That it was not properly an annualrent, but an aliment of five per cent. and that the term of payment of the annualrent was after the act of Parliament 1641, declaring such bonds moveable ; and albeit the fisk and relict be there excluded, yet the *jus mariti* is not, but is only added by the act 1661.

THE LORDS found, that seeing this provision bears annualrent, whether more or less, and that the marriage was after the term of payment, that it was heritable, and fell not to the husband *jure mariti*, but only the annualrents thereof.

No 13.
Bond bearing
annualrent
falls not un-
der the *jus*
mariti.