

tion to the heirs of the granter, of the force and effect of the first bond; for in law debitor nunquam præsumitur donare quamdiu est debitor, specially seeing the umquhile Earl himself was possessor and had the bond libelled in his own hands the time of his decease; and the pursuer cannot qualify that ever the bond libelled became his evident, or was delivered to him before the defunct's decease, who lived more than eleven years after the making thereof. Likeas the Lady Cardross, mother to the pursuer, being examined by the Lords, she confessed that she recovered the bond since the Earl's decease, maker thereof, by payment of 2000 merks therefor to a mediate person, who would not declare to her in whose hands that bond had been, and to whom the money should have been paid therefor; in respect whereof the defender *alleged*, That absolvitor ought to be granted from this pursuit, both for all the years bygone, acclaimed by the Lady Mar, as liferentrix, since her husband's death, and also for payment of any price of the land, sold sinsyne by the defender. THE LORDS repelled the exception, and found, that this prior bond was not taken away by that posterior security, granted by the father thereafter to that same son in whose favours the bond was given, seeing the last security made no mention that it was granted for express satisfaction of the first, and so they were found both to stand; but the LORDS assoilzied the defender from all by-gones acclaimed by the liferenter, preceding the date hereof (being *fructus bona fide percepti*); and also found, that the defender for the heritor's and liferenter's security and interest in time coming, by their wanting of the land, ought to have the price of the land, which the defender had received therefor, to be paid by him to them at Whitsunday next, and for the which the LORDS decerned. See WRIT.

No 118.

Act. *Stuart, Hope & Baird.* Alt. *Nicolson & Primrose.* Clerk, *Hay.*

*Fol. Dic. v. 2. p. 143. Durie, p. 875.*

1661. November 14. FLEMING against Her CHILDREN.

A RELICT having paid a debt due by her husband, and taken a discharge thereof, but not an assignation, being at the time neither executrix to her husband, nor tutrix to her Children, was presumed to have done it on purpose to relieve her Children. THE LORDS refused to sustain it as an article of charge in a count and reckoning with her Children.

No 119.

*Fol. Dic. v. 2. p. 143. Stair.*

\* \* \* This case is No 24. p. 8259. voce LIFERENTER.