

able to William Muirhead, for the use and behoof of Robertland ; which bond the present Duke contended was void and null, upon these presumptions : 1. It bears Belhaven to be cautioner, who is not subscribing. 2. *In anno* 1642, £500 was borrowed from Robertland, and paid in the 1643, which was a better security ; and the greater sum is presumed to contain the lesser. 3. In the year 1648, Robertland got a new security, with several cautioners, for £20,000, in the name of Auchinharvey, for his own behoof, and yet did not claim payment or security for the bond in question, for which he had no cautioner. 4. [*Anno*] 1658, the lands of Chelsey were sold by commission ; and William Muirhead, though a commissioner, did not claim payment of this bond. 5. The estate of Hamilton, *in anno* 1658, was disposed of for payment of the debts of the family, by commission from the usurpers, and publication made at the market-cross of Edinburgh for that effect ; and the creditors came to Hamilton, where the commissioners sat, and got lands and conveyances for their debts ; and yet Robertland set up no claim for this bond, although he was in the country, and at the same time assigned the bond to Richard Cunninghame, who intimated the same to the Duke and Duchess, and could never hope to have any satisfaction thereafter, the lands being forfeited, and the Duchess not representing her predecessor. Answered, Robertland being a cavalier, did not trouble the family during the usurpation, when it was in distress ; but, *in anno* 1662, process was commenced and insisted in some years. 2. *In anno* 1652, the bond is entered in the court of claims, as appears by the attest of William Welsh, secretary. 3. If presumptions may take away bonds, no man will be secure. The Lords sustained the foresaid presumption to take away the bond.

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1688. *June 20.* BLACKBARRONY *against* CLERKINGTOUN.

IN a pursuit upon a contract of marriage, for payment of a bond due to the wife by her father, and therein assigned to her husband, against the debtor's grandson, whose father was heir to the debtor, and consenter in the said contract with the wife, his sister ;—Alleged for the defender, No process for payment of the bond narrated in the contract, unless the bond itself were produced ; and, whatever might be pretended against the debtor in the bond, had he narrated the same in the contract, the narrative ought not to militate against the defender's father, who was but heir to the debtor, and not principally concerned, or obliged to pay, but only a consenter in the contract. Answered, The contract narrates all the substantials of the bond, and the defender's father, who was then heir to the debtor, would not have signed any contract narrating a debt himself would be liable for, had he not been convinced of the truth of it ; nor is he a consenter in general, but also in the clause of assigning the said bond. The Lords sustained process on the contract.

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