

*** In conformity to the above were decided the cases Muirhead against Daniston, No 360. p. 6152. *voce* HUSBAND and WIFE ; and Blair against Hamilton, No 325. p. 6110. *IBIDEM.*

No 141.

1614. December. RELICT of CRAWFORD *against* CRAWFORD.

THE relict of James Crawford in Broughton pursued David Crawford as cautioner for James, to infest her in 400 merks yearly that the defunct had infest her in victual, exceeding the avail of the said 400 merks yearly. She *answered*, That it was not in satisfaction of her former contract, and so could not take it away. THE LORDS found, That it behoved to have been given rather *animo exonerandi quam donandi*, and so behoved to be interpreted *in duriolem sortem*; and likeways, in an action pursued by Daniston, relict of Mr James Muirhead, minister, against George Muirhead, No 360. p. 6152. for infesting her in an annualrent according to her contract of marriage, he suspending that she was infest by her husband in more than the contract bore ; and she answering it was not in contentation of her contract ; the LORDS found that it behoved to be interpreted in contentation of the contract.

No 142.

Found in conformity with the above cases.

Fol. Dic. v. 2. p. 145. Haddington, MS. No 2584.

1632. February 17. KINNAIRD *against* YEAMAN.

AN infestment granted by a husband to his wife, presumed to be in implement of a clause in their contract of marriage, obliging him to lay out a certain sum for her liferent provision, though the infestment bore no sort of relation to the contract.

No 143.

Fol. Dic. v. 2. p. 131. Durie.

*** This case is No 40. p. 5469.

1661. November 19. FLEMING *against* GIBSON.

A RELICT, executrix to her husband, and thereby debtor to her children in their provisions constituted by the defunct, lent out a sum of money, in the name of two of these children, only payable to herself in liferent, with a substitution of one of these children to the other, failing heirs of their own body ; and failing all these, to the mother herself and her heirs. In this case, the bond was found to be in satisfaction of the bairns portions *pro tanto*, and a donation *pro reliquo*, though it was *argued*, That parents, bestowing sums for the use of their bairns, are presumed, from natural affection, to do it *animo donandi*,

No 144.