

1676. February 10. ALEXANDER ABERNETHY *against* ARTHUR FORBES.

No 169.

THE LORD Saltoun having given a bond of 20,000 merks to Alexander Abernethy, upon account of his service, and of the service done by his brother James Abernethy; thereafter the said Lord Saltoun did grant a bond, making mention that the lands of Auchincleuch belonged to him and his authors, and that the said Alexander had been instrumental to obtain a reduction of the rights of the estate of Saltoun to the behoof of the said Lord Saltoun, and therefore obliging my Lord Saltoun to infest him in the said lands.

THE LORDS found, that the said bond being after the former and for the causes foresaid, and having no relation to the said former bond of 20,000 merks, that it should be in satisfaction of the same, could not be interpreted to be in satisfaction thereof. And the brocard *debitor non præsumitur donare* does not militate in this case, seeing the Lord Saltoun was in a capacity to give both the said bonds by way of donation; and the question was not betwixt the said Alexander and the creditor, but betwixt another person to whom thereafter he had gratuitously disposed his estate.

*Fol. Dic. v. 2. p. 147. Dirleton, No 333. p. 159.*

1685. December.

LAURENCE ORD and his Spouse *against* JOHN and MARY INNESSES.

No 170.

A GRANDFATHER, who stood obliged to pay 2000 merks to his daughter and grandchildren, disposed some estate to his son, whom he burdened with the payment of several debts due by the disponent, particularly enumerated, and with the payment of 1000 merks to the said grandchildren, for their better provision; and these claiming both sums, it was *alleged*, That *debitor non præsumitur donare*.

*Answered*; The last sum is not payable by the same person; and although in the same papers other payments with which the disposition is burdened are expressed in satisfaction of debt, yet this last sum is declared payable to the grandchildren for their better provision, which imports, that they should be better provided than they were before, and do not in the least mention the grandfather's obligation; and there is an opulent estate left to the disponent's wife in fee.

THE LORDS having considered the circumstances of this case, found both sums due to the grandchildren.

*Fol. Dic. v. 2. p. 147. Harcarse, (BONDS.) No 204. p. 46.*