

funct, she was ranked, not only for her principal sum, but also for her bygone annualrents, which were found due, notwithstanding of the aliment bestowed upon her by her father in her minority; and the maxim, *debitor non præsumitur donare*, was not found to take place, in respect, *1mo*, The bond did not come from the father; *2do*, The *pietas paterna*; *3tio*, That in his accounts, or any other way, he never expressed an intention to aliment her out of these annualrents. (See APPENDIX.)

No 115.

Fol. Dic. v. 2. p. 142.

S E C T. III.

Deeds in favour of Children or near Relations, whether presumed in satisfaction of former revocable settlements?

1623. July 24.

STUART *against* FLEMING.

IN an action whereby ——— Stuart, natural son to umquhile James Stuart, Provost of Glasgow, pursued Eleming, relict and executrix to his said umquhile father, for payment of the sum of 400 merks, contained in a bond made by the father to the pursuer, which bore, to be granted by the father for love and favour of his son, and was delivered by the father to a third person, to be kept and delivered to the son after the father's decease. The defender compeared and *alleged* absolutor, because that bond was fulfilled by the defunct giver thereof in his own time, in so far as the father, for the same cause of love and favour, had given to his son infestment of an annualrent of 50 merks, redeemable by payment of the like sum contained in this bond, viz. 400 merks; and which annualrent was thereafter redeemed by the father, and the sum paid to the son; all which was done after the term contained in the bond now libelled; and therefore it must be esteemed an implement of this bond, being done after the term of payment appointed thereto, and the sum being alike, and the causes of both the securities one; and being done by the father to his son natural. This allegiance was repelled by the LORDS, and they found, that the posterior security took not away the first, seeing the last made had no relation to the first security, nor mentioned that it was given in satisfaction and fulfilling thereof, and that the last security was of a different nature from the first, being an infestment of annualrent of 50 merks; and that the first bond was consigned by the father to the son's use, which he might have recalled; and taken back in his own time; and not doing the same, it behoved to remain an effectual security to the son, seeing both the securities might sub-

No 116.

A man executed a bond to his natural son for a sum, retaining it. He thereafter infest him in an annualrent, redeemable for the same sum contained in the bond. As the one did not mention the other, found that both stood.

No 116. sist, which is to be considered, seeing he was his natural son only, and so might appear not to have the benefit of both securities, as possibly the lawful son might have claimed.

Act. *Mowat.*

Alt. *Hope.*

Clerk, *Scot.*

Fol. Dic. v. 2. p. 143. Durie, p. 75.

* * * Haddington reports this case :

1623. *July 29.*—IN the action pursued by James Stewart burgess of Glasgow against Isobel Fleming, relict of his father, who had given him a bond of 400 merks for his sustentation; the LORDS found, that a posterior bond given to him by his father, of the like sum, took not away the first.

Haddington, MS. No 2911.

No 117.

1624. *November 13.* WALLACE *against* WALLACE.

A BOND of provision though retained in the father's hands and power during his life, found to be taken away by a posterior provision granted to the child equivalent to the sum contained in the bond of provision.

Fol. Dic. v. 2. p. 143. Durie.

* * * This case is No 14. p. 6344., *voce* IMPLIED CONDITION.

1639. *February 20.* LO. CARDROSS *against* E. of MAR.

No 118.

A bond was granted by a father to infest a younger son in certain lands. It was undelivered at the father's death. Found not taken away or implemented, by the father disposing other lands to the son of greater extent.

THE Lord Cardross pursuing the Earl of Mar, as heir to his father, for implement of a bond granted by the umquhile his father, in favours of the pursuer's father, Henry Erskine, son to the umquhile Earl, whereby he obliged him and his heirs, to infest the said Henry and his heirs, (with reservation of the old Lady Mar, the said Henry's mother, her liferent of the lands), in the lands of Spittleton and Arnekeip, and because the defender had sold the lands, the said Lord Cardross, and the Lady Mar for her liferent, pursue for the price of the said lands, and avails thereof, and for the yearly duty thereof since the date of the bond. And the defender *alleging*, That since the date of the said bond, the umquhile Earl granter of the bond, had given satisfaction by infesting of the said umquhile Henry in far more lands, of far greater avail by a quadruple worth than the lands of this bond; which being done by the father to the same son to whom the bond was given, and the said bond libelled bearing, 'to be granted for love and favour,' must be found an implement of the said prior bond, and so must be a libera-