

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-