amongst arbiters, other evidences may be sufficient; and there were adminicles extant of the assignation, that might have given ground to prove the tenor thereof by witnesses; and though this bond be not, *per expressum*, submitted, yet all clags and controversies, concerning any bonds or debts, are submitted; which might well comprehend this, especially being so old and controverted a right. It was answered, That, if the submission had been wholly general, relating to claims, or, if it had borne a clause conform to claims to be given in, it might have comprehended this sum; but, being special as to the matters of less moment, without the said clause, it cannot be extended to this sum, especially seeing the oversman is a cautioner in this bond. The Lords found none of the reasons of reduction relevant, but adhered to the decreet-arbitral.

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1672. *January 5.* JACK *against* JACKS.

IN the cause mentioned betwixt these persons, debated the thirteenth day of December 1671, it being represented by bill, That the contract of marriage betwixt Jack and his second wife was lost; and desiring, that,—seeing the bond of provision to the bairns of the second marriage did bear to be "in satisfaction of all that the bairns could have by any contract betwixt their father and mother;" which did import that there was a contract of marriage; and this being a provision to children of a second marriage, who ordinarily have provisions by contract; and that it is a natural duty to provide children,—less solemnities in writs by a father, *inter liberos*, may suffice than the greatest requisites required by the Act of Parliament, of two notaries and four witnesses, there being here two notaries and three witnesses. The Lords did also take in consideration another reason of reduction of this bond, That it being clandestine, lying in the father's hand, who, by a public solemn contract of marriage, disponed his lands to his eldest son, and had reservations of liferents for himself and his wife, and a provision in favours of the eldest son of the second marriage; the said contract doth import a revocation of this bond of provision, which was in the father's custody, neither delivered nor registrate: and it would be an act of great fraud if the same, being latent, and not mentioned among the reservations in the son's contract of marriage with a stranger, for a tocher, that upon that latent bond the bairns of that marriage should be excluded or burdened; as was formerly found in the case of the Laird of Glencorss: so that, this bond being so little favourable, the nullity thereof ought not to be supplied. It was answered, That there were specialities in Glencorss his case, not quadrating with this; and that the onerosity of the son's contract could only be *in quantum* it were onerous: and that the presumed revocation of the father cannot be inferred by disponing to his son; because it is offered to be proven, that the father, long thereafter, upon his own expenses, caused deduce an apprising upon this same bond, which doth evidently both adminiculate the subscription, and take off the presumption of revocation. It was answered, That it does not import that the father revoked not this bond of provision by his son's contract, though thereafter he has caused apprise upon this bond; but only that he changed his mind, likely by insinuation of his second wife; which he could not do, after the contract, by the most

solemn and direct writ under his hand; so that this bond, being both fraudulently latent and revoked, cannot be adminiculated by any thing posterior to the contract done by the father, in prejudice of the heir of the marriage. The Lords reduced the bond, unless the contract of marriage betwixt Jack and his second wife were produced, by which he was obliged to give such provisions.

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1672. *January 5.* ANDREW BRYSON *against* BARBARA HOME.

IN the cause betwixt Barbara Home and Mr Andrew Bryson, decided [*See Dictionary, page 959,*] wherein the said Barbara, having pursued Mr Andrew for implement of her contract of marriage, and that the lands disponed to him by his father, after the contract, might be burdened therewith, and particularly a tenement at the West Port; and, he having disponed the same to John Johnstoun, that he should be liable for the value; which being referred to his oath, he deponed, That he had disponed it to John Johnstoun, but for a debt due by his father anterior to the disposition; which he might lawfully do; because, by the Act of Parliament 1621, any sums paid by interposed persons to the bankrupt's creditors, are allowed, without distinction, unless other creditors have done prior diligence. It was answered, That that clause could only be understood of those who were not bankrupts, the time of the dispositions, to interposed persons, but who, *ex eventu*, became bankrupt; for, in that case, the interposed person neither could, nor was obliged, to know the creditors, who had done no diligence; and so might pay to any, as the disponer himself might have done. But if the disponer were notoriously bankrupt, as being fugitive and fled, or if the disposition were *omnium bonorum;* as the bankrupt himself could not prefer a creditor, even without diligence, because he behoved to dispone, not only for a just and onerous, but for a necessary cause, which cannot admit of voluntary preference; so neither could the interposed trusted person, by such a bankrupt, gratify or prefer. The Lords found, That there was nothing yet alleged, that Bryson was a notorious bankrupt, or had nothing remaining after his disposition to his son; and that, except in these cases, the interposed person might prefer any creditor to another not having done diligence: but, if they would so condescend, the Lords declared they would take the same to consideration; because the case, whether a notorious bankrupt can prefer one creditor to another, hath not as yet been decided.

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1672. *January 9.* The LAIRD of POLMAIS *against* The LAIRD of GLORRAT.

THE Laird of Polmais pursues a declarator,—that a bond of 2000 merks granted by Polmais, Glorrat, Carden, and several other heritors of the shires of Stirling and Clackmannan, to Mr Andrew Oswald, and whereof Mr Andrew gave an assignation blank in the assignee's name,—that the said blank assignation was to the behoof of the pursuer, and the other heritors of the said shires; and was only