

1688. *February.*

No 84.

SIR PHILIP ANSTRUTHER *against* the CHILDREN of INNERGELLY.

INNERGELLY having given bonds of provision to his children, whereon infestment followed after his death, the LORDS reduced the bonds upon the same reason urged for Robertson's [creditors against his] bairns, (*supra* No 83.) the bonds not being notified by some public deed in the father's time: Though assignations intimate to the debtor would sustain against posterior debts; and here the creditors were anterior, and the father no merchant, but a landed gentleman; and it was not respected for the children, that the father, the time of granting the bond, was no bankrupt, though that is sustained for strangers, *supra* No 83.

(Harcarse, (BONDS.) No 220. p. 50.

1697. *January 12.*

No 85.

CREDITORS of KINFAUNS *against* CARNAGIE.

IN a competition betwixt a defunct's creditors and his daughter, for a sum in a bond, which he had taken payable to him and her, the longest liver, and their heirs and assignees; the LORDS found the daughter simply preferable to the creditors, whose debts were contracted posterior to the date of the said bond, and preferred her even to the anterior creditors, unless they would allege that the father was insolvent at the time of his decease, when her fee began; for they thought that parents might give provisions, unless they were either impeded by the diligence of creditors, or by actual insolvency. *See* the particulars, p. 489.

*Fol. Dic. v. 1. p. 72. Fountainball, v. 2. p. 59.*1697. *February 11.*SIR JAMES CAMPBELL of Cefnock, *against* SIR ALEXANDER MURRAY of Blackbarony.

No 86.

The posterior insolvency of a father, no ground for reducing a blank bond filled up by him in name of his son, and delivered.

THIS declarator was, that the 23,000 merks, now in Forth's name, was truly the Earl of Melfort, his father's money, he being then an infant *in familia*, and had no other way of acquiring, (it not being pretended it was a *peculium adventitium* flowing from any other by donation, succession, or otherwise,) and therefore was liable for the father's debt, and affectable by his creditors, as was found June 19, 1668, Nasmith of Posfo's Creditors against his son, Stair, v. 1. p. 530. *voce* HEIR APPARENT.—*Answered, Esto* it was Melfort's money, what hindered him, being then solvent, and under no legal restraint and incapacity, to fill up his son's name therein, or give the same to his son, and who will be preferable to his father's creditors who had done no preferable diligence to affect it?—THE LORDS inclined to prefer my Lord Forth's right as preferable, unless they could say, insolvent. Then Cefnock repeated his forthcoming, and craved to be pre-

ferred, because he had arrested prior to the filling up of Forth's name in these blank bonds, at least prior to any intimation of his being creditor therein; and so *esto* he had been assignee, a creditor of the cedent's arresting before intimation affects it *nexu reali*.—*Answered, imo*, They denied it was Melfort's money. *2do*, *Esto* it were, Cefnock was not then creditor to Melfort, not having then constitute his debt of the bygone intromissions with his estate.—*Replied* to the *first*, They opposed Blair Drummond's oath, bearing he filled up Forth's name by Melfort's order, which proves the money was Melfort's. To the *second*, Though Cefnock had not then obtained a decret against Melfort, yet he was creditor by the general act rescissory in 1690, and by his special act; and had raised his summons and arrested thereon.—THE LORDS preferred Cefnock on his arrestment, and decerned Blackbarony, the debtor, to pay him. See BLANK WRIT.

*Fol. Dic. v. 1. p. 72. Fountainball, v. 1. p. 766.*

No 86.

1700. February 9.

LIBERTON and EDMINSTON, against The Countess of ROTHES, &c.

IN the competition betwixt James Liberton of Leiden, and Janet Edminston his spouse, against the Countess of Rothes, and other creditors of Edminston of Carden, the Lords found that old Carden having disposed his estate to his eldest son, with the burden of fundry provisions to his other children, and particularly to the said Janet Edminston, the son's creditors could not quarrel the same, nor seek preference thereto, but that the father's creditors might be heard against these provisions, either as latent or undelivered, or that parents cannot burden their estates with sums of money payable to their children till their lawful creditors be satisfied; at least, that they had a considerable visible estate, sufficient to pay all, at the time of their settling these provisions, as was found betwixt the Duke of Queensberry and the Children of Mousewell, (p. 961.) ; and that the father's condition might be inquired into, whether insolvent at that time, yea or not; tho' it is very hard to put creditors upon these indagations; and wherever the debtor's estate is dubious, it is juster that the children should be losers, than that the creditors should want. See the 30th June 1675, Clerk *contra* Stuart, marked both by Stair and Dirleton, with observations on the decision, No 46. p. 917. The creditors urged the late decision, Napier of Tayock *contra* Falside. Fountainhall, v. 1. p. 729. *voce* PROVISION TO HEIRS and CHILDREN.

*Fol. Dic. v. 1. p. 72. Fountainball, v. 2. p. 87.*

No 87.

Competent to creditors to explicate the solvency of a father granting provisions to his children.

1703. July 1. DAVID REID against GRIZEL WHITSOM, and RUTHERFORDS.

By contract of marriage betwixt the said Grizel and John Rutherford, she is provided to a life rent annuity of 300 merks out of his lands, but with this quality, that in case there were children of the marriage, she, *per verba de presenti*, re-

No 88.

A wife brought a tocher of 2000 merks. She was provided to the