are willing to acknowledge the last bond, although containing the greatest sum. But then the first must be reputed as included therein, seeing the second bears an express clause, that it is in satisfaction of all she could ask or crave; so the second is a clear innovation and change of the first, and an implicit implement and revocation thereof; and so can never subsist as distinct and separate debts, seeing *debitor non præsumitur donare;* as was found, *29th June* 1680, *Young* against *Paip*; and in 1688, the *Lady Yester* against *the Earl of Lauderdale;* and, *November* 1685, *Robertsons*; and, more lately, *Earl of Northesk* against *Carnegie of Phinhaven.* And, for confirming that the second bond absorbs the first, this very pursuer did raise an action on the last bond, without any mention of the first, bearing, she had no other maintenance for her education but that sum; which shows they had not the confidence then to claim both debts; and, whatever might be pretended, if the sum in the first bond had been greater than the second, yet there can be no pretence where the second bond contains a larger provision than the first.

ANSWERED,---That, in provisions by parents to children, as their estates grow, so they augment their portions; and they are all sustained as *distinctæ liberalitates*, as Justinian decides, *l.* 7, *C. de Dot. Promiss.* conform to which, Dury observes, the Lords frequently decided in his time. And the first bond bears to be given by him as tutor and administrator to his daughter, and to be justly resting owing; which imports a clear ground of debt: and the clause, *in satisfaction*, does not recal the first bond unless it had expressly mentioned it, or had bore to be in satisfaction of her portion natural, or bairn's part of gear: and it excepts what he, of his own good-will, shall farther give her; which may well enough be applied to the first bond. And the pursuing for the last bond allenarly was not a passing from the first, especially seeing it was not then in their hands.

REPLIED,---The clause bearing to be as administrator, and justly resting owing, are but words of style; for a father, both *jure naturæ et ex lege*, is bound to portion his daughter; and, unless they say she had a *separatum peculium adventitium*, coming to her *ex bonis maternis*, or otherwise than by her father, the first bond can never sustain; and that is the case of Justinian's law 7, above cited; and the exception of his good-will must not, with Janus, look back to a bond ten years prior; but, in natural sense, imports what he may freely bestow on her further after that bond, but not what was given before.

The Lords, in this circumstantiate case, found the first bond included in the second; and decerned allenarly for it and its bygone annualrents; and that the first bond was annulled and revoked by the clause of satisfaction contained in the second, and the other grounds above-mentioned.

Vol. II. Page 494.

1709. *February* 18. The DUCHESS of BUCCLEUGH *against* HARY SCRIMZEOR of BOWHILL.

THE deceased Mr David Scrimzeor having been, for many years, receiver of the Duchess's rents; and at his death debtor in a considerable balance of £19,000 Scots. And having cognosced the debt before the Commissaries of

Edinburgh, her Grace now pursues Mr Hary Scrimzeor of Bowhill, his heir, on the passive titles, for payment, not of the whole debt, but *in quantum lucratus* by his succession to the said Mr David, the debtor; in so far as,—Mr David having made a disposition of his estate to Mr James Melvill of Halhill, and that deed being quarrellable *ex capite lecti*,—Mr Hary, for validating and fortifying the said disposition, accepted of 5000 merks, and granted a renunciation of any pretence he had, in favours of the said Mr James Melvill: And the Duchess insisted only for the 5000 merks which he had got for renouncing her debtor's succession, and extended it no farther.

ALLEGED,—*Esto* he had got a gratuity for renouncing his interest, the same can never infer a behaviour as heir, since he did not prejudge the creditors, nor, by any positive deed, transmit or convey any thing to which he might succeed *jure sanguinis*, as heir to the defunct; conform to what the Lords found, *5th July* 1666, *Scot* against *the Heirs of Auchinleck*.

ANSWERED,—His renunciation was, upon the matter, an effectual transmission and conveyance of the heritage to Mr James Melvill, in prejudice of the creditors: for, the disposition being *in lecto*, either the apparent heir or his creditors could reduce the same; but this renunciation is equivalent to a consent and ratification. And it is *indubitati juris* that the apparent heir's consent validates a disposition made on deathbed: and, if apparent heirs be overtaken on very small intromissions, much more should he be liable, who has got 5000 merks: and it was so found lately betwixt *the Creditors of Laurence Ord* and *John Lightfoot*.

REPLIED for Mr Hary,—He was not bound to dispute, *hoc loco*, what his renunciation would import, and it would never prejudge the creditors' action of reduction of Mr James Melvill's disposition *ex capite lecti*: And, by an express decision in Stair, 19*th July* 1676, *Nevoy* against *Balmerino*, they found an apparent heir's getting benefit by a transaction did not make him liable, unless he had done a deed that communicated the defunct's right, and hindered the creditors from affecting it; which cannot be pretended in this case.

The Lords saw this dipped on the establishing and introducing of a new passive title; which is not to be done without great deliberation; therefore they ordained the cause to be heard in their own presence. *Vol. II. Page* 494.

1709. *February* 18. The EARL of LAUDERDALE *against* The TOWN of HADDINGTON.

THE Lord Justice-clerk reported the Earl of Lauderdale against the Town of Haddington. Of old, when the burgh of Haddington fitted their *æqué* in Exchequer, they paid £15 Scots, as their burgh-maill due to the crown: but, 40 shillings Scots of this being given off by the crown to the abbots of Dunfermline, they paid only £13 Scots to the crown, and got deduction and retention, in their own hand, of the 40 shillings given off to the abbot.

In King James VI.'s reign all these feu-duties were raised and augmented, with the alteration of the value of money, to ten times more than they paid at first: So that, for the £13 Scots of old, they now pay L.130 Scots; each twenty shillings being raised to ten pounds Scots. The abbot's right, on the south side