1676. *July* 19. & *December* 13.

NEVOY *against* LORD BALMERINO.

No 85.

IN the case Glendinning against Earl of Nithsdale, *supra*, an apparent heir having granted a simulate bond, in order to lead an adjudication of his predecessor's estate, his intromission, by virtue of this title, was not reckoned a behaviour; but, upon that occasion, the LORDS made the act of sederunt, 28th February 1662, declaring, that it should be *gestio pro hærede* to intromit upon such simulate title, whether the apprising was expired or not. This act was extended to intromission had in virtue of an apprising led upon the apparent heir's just and true debt, contracted by him before he became apparent heir, without any view to be the foundation of an apprising against the predecessor's estate.

Fol. Dic. v. 2. *p.* 33. *Stair. Dirleton. Gosford.*

*** This case is No 51. p. 9694.

1676. *November* 8. JEFFRAY *against* MURRAY.

No 86.

A PARTY being pursued upon the passive titles, and in special upon that of charged to enter heir; and having offered to renounce, it was *replied*, That he could not, seeing *res* was not *integra*, in respect he had granted a bond, of purpose that thereupon the estate might be adjudged; the LORDS found, that, albeit he had not granted the bond upon the design foresaid, yet, the estate being adjudged and incumbered by his deed, he ought to be liable to the defunct's creditors *pro tanto*, or to purge.

IT is thought, that if the apparent heir should *dolose* grant a bond, that the defunct's estate might be thereupon adjudged, he ought to be liable *in solidum*; but if he grant a bond which is a lawful deed, and thereupon his creditor adjudge, which he could not hinder, it is hard to sustain a passive title against him; unless his creditor, having adjudged, were satisfied by that course; in which case, seeing the defunct's creditors are prejudged, it is reason he should be liable *pro tanto*.

Fol. Dic. v. 2. *p.* 33. *Dirleton, No* 380. *p.* 185.

Clerk, *Gibson.*