No 10.

give them as good right to their portions, as him to the fee of the estate; seeing, if he had entered heir to his father, and miskenned the disposition, he would undoubtedly have been liable, the said provision, importing a constitution of debt for the children's provisions, which, in law, would bind heirs or executors, and importing no less than in so far as the disposition made to the eldest son was lucrative, they might have reduced it upon the act of Parliament, as done *in fraudem creditorum*; and therefore the reservation, as it was but *nuda facultas*, not being exercised, and taking effect, did prejudge them of their real security, as it was found in that other case, but did not make the obligation void and null for their portions against Morphie, upon the foresaid grounds of law.

Fol. Dic. v. 1. *p.* 291. *Gosford, MS. No* 575. *p.* 316.

1677. *January* 6. Creditors of Mousewell *against* Children.

No 11.

One having disponed his estate to his eldest son, reserving a faculty to affect or burden the same with a certain sum for provisions to his children, the son's creditors did diligence against the estate, and were infeft upon their apprisings. Thereafter the father exerced this faculty in favours of the children, by granting them heritable bonds referring to the faculty, upon which they were also infeft. In a competition The Lords preferred the children in virtue of the above faculty, though the creditors' infeftments were prior. *See* No 13. p. 4104.

Fol. Dic. v. 1. *p.* 292. *Stair*, *Dirleton*, *Gosford*.

*** *See* this case, No 80. p. 961.

1677. *June* 21. Hope-Pringle *against* Hope-Pringle.

No 12.
A person having disponed his estate to his son, reserving power to himself to burden it to a certain extent, and thereafter granting a bond to his daughter without mention of that power, the bond was found to affect first his

Hope-Pringle having disponed his whole estate to his eldest son with reservation to him to burden it with a liferent to his second wife, or with wadsets or annualrent to any person, not exceeding 5000 merks, he had thereafter a daughter of the second marriage, to whom in *anno* 1636 he granted a bond of 1000 merks, who now pursues the heir of the eldest son for declaring it to be a burden upon the estate disponed with the reservation foresaid. It was *alleged*, that this bond could not burden, because the reservation being only a faculty, and in a specific form, the same was never exercised, for neither doth this bond relate to that reservation, nor hath it any obligement to infeft, but only a personal obligement to pay annualrent, as well infeft as not infeft. It was *answered*, that the specific way of burdening was not taxative; and if the father had granted this daughter a tack redeemable by this sum, or an assignation to the