

No 80. it being a principle, *that a debtor can do nothing in prejudice of his creditor, without an onerous cause*, it is certainly both fraud and prejudice, that he should not pay his debt, but should give away to his children, that part of his estate which the creditors might have affected: And inhibition being only in these terms, *That the party inhibited should do no deed in defraud of the creditor*; it might be pretended, by the same reason in reductions *ex capite inhibitionis*, that the party inhibited did nothing in defraud or prejudice of the pursuer, in respect the time of the granting the bond or right craved to be reduced, he had effects and sufficiency of estate beside. See FACULTY.

For Queensberry and other Creditors, *Lockhart, &c.*
Cunningham, Anderson, & Mackenzie.

For the Children and Relict,
Clerk *Gibson. In presentia.*

Dirleton, No 418. p. 205.

No 81. 1679. February 7. HAMILTON of Pardowie, against Mr ANDREW HAY.

BONDS of provision sustained, though the fathers be under burden, if solvent, and he have another visible estate, as found in the case of Moufwell's Creditors, No 80. p. 961.)

Fol. Dic. v. 1. p. 71. Fountainhall MS.

No 82. 1679. December 23. ERSKINES against CARNEGIES & SMITH.

No 82.
A wife was provided to the liferent of her husband's whole means. She restricted herself to a half, and renounced the remainder in favour of her children. The children were postponed to creditors whose debts were before the contract of marriage. There was no other fund of payment during the relict's life.

JOHN ERSKINE having adjudged certain tenements in Edinburgh, upon a debt due by Alexander Carnegie, pursues Janet Smith, relict of the said Alexander, as possessor of the maills and duties. Compearance was made for James and Elizabeth Carnegies, who craved preference for the half of the rents of these tenements, because, by contract of marriage betwixt the said Alexander and the said Janet Smith, 'she was provided to the liferent of the said whole tenements, but in case there were children surviving, she restricts herself to the one half, and renounced the same in favours of the children;' so they being the only children of that marriage, have right to that half.—The pursuer answered, That this was a fraudulent contrivance, to prefer children to creditors, preceding the contract, which, if sustained, would be of pernicious consequence; for, though a mother may restrict in favours of children, where there remains to the father a sufficient free estate to satisfy his debt; but here the pursuer was an anterior creditor, and the defunct's whole means and estate was liferented by his wife, his tenements being worth 1800 merks, or 1000l.; and the tocher also liferented by the wife, being 5000 merks; so that the liferent was exorbitant, and the constituent had nothing unliferented.—It was replied, That beside the tocher, he had 1000l. to be paid at his good-father's death, with the property of the houses and the tocher.