

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-