solemn and direct writ under his hand; so that this bond, being both fraudulently latent and revoked, cannot be adminiculated by any thing posterior to the contract done by the father, in prejudice of the heir of the marriage. The Lords reduced the bond, unless the contract of marriage betwixt Jack and his second wife were produced, by which he was obliged to give such provisions.

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1672. *January 5.* ANDREW BRYSON *against* BARBARA HOME.

IN the cause betwixt Barbara Home and Mr Andrew Bryson, decided [*See Dictionary, page 959,*] wherein the said Barbara, having pursued Mr Andrew for implement of her contract of marriage, and that the lands disponed to him by his father, after the contract, might be burdened therewith, and particularly a tenement at the West Port; and, he having disponed the same to John Johnstoun, that he should be liable for the value; which being referred to his oath, he deponed, That he had disponed it to John Johnstoun, but for a debt due by his father anterior to the disposition; which he might lawfully do; because, by the Act of Parliament 1621, any sums paid by interposed persons to the bankrupt's creditors, are allowed, without distinction, unless other creditors have done prior diligence. It was answered, That that clause could only be understood of those who were not bankrupts, the time of the dispositions, to interposed persons, but who, *ex eventu*, became bankrupt; for, in that case, the interposed person neither could, nor was obliged, to know the creditors, who had done no diligence; and so might pay to any, as the disponer himself might have done. But if the disponer were notoriously bankrupt, as being fugitive and fled, or if the disposition were *omnium bonorum;* as the bankrupt himself could not prefer a creditor, even without diligence, because he behoved to dispone, not only for a just and onerous, but for a necessary cause, which cannot admit of voluntary preference; so neither could the interposed trusted person, by such a bankrupt, gratify or prefer. The Lords found, That there was nothing yet alleged, that Bryson was a notorious bankrupt, or had nothing remaining after his disposition to his son; and that, except in these cases, the interposed person might prefer any creditor to another not having done diligence: but, if they would so condescend, the Lords declared they would take the same to consideration; because the case, whether a notorious bankrupt can prefer one creditor to another, hath not as yet been decided.

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1672. *January 9.* The LAIRD of POLMAIS *against* The LAIRD of GLORRAT.

THE Laird of Polmais pursues a declarator,—that a bond of 2000 merks granted by Polmais, Glorrat, Carden, and several other heritors of the shires of Stirling and Clackmannan, to Mr Andrew Oswald, and whereof Mr Andrew gave an assignation blank in the assignee's name,—that the said blank assignation was to the behoof of the pursuer, and the other heritors of the said shires; and was only