of Convie, upon the passive title as successor *titulo lucrativo* to his father *post contractum debitum*,—the said Duncan having proponed a defence upon a disposition granted to him by his father, for an onerous cause; and the onerous cause being condescended on, the same was quarrelled, as not being adequate to the value and worth of the estate disponed to him by his father: as also, the debts he had paid for his father were but voluntarily, without an obligation upon his part to pay the same; whereby, if that should be sustained, it might be in his power to pay what of his father's debts he pleased, and prejudge others of his creditors, whom he would not pay.

This was not decided, but the parties agreed; but the Lords thought it a very considerable point.

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1666. *June* 7. WILLIAM CRAWFORD *against* ANDREW DUNCAN.

ANDREW Duncan, being debtor by bond to William Crawford, in the sum of 200 merks, and being pursued for payment,—

It was ALLEGED by the defender, Andrew Duncan, That the bond is null, wanting date.

It was REPLIED, There was no necessity of a date, but in case of improbation or preference amongst creditors, or inhibitions; and there needed no condescendence of the date, seeing the pursuer was content to refer the verity of the subscription to the defender's oath. And it being questioned whether or not the ticket, being intrinsically null, wanting date, and the date being referred to the defender's oath, the defender might depone, not only as to the date, but qualification, whereby he might totally elide the bond:—

The Lords repelled the defence, and found, That the defender might have his oath upon the verity of the subscription; and, protesting for a qualified oath, might adject what quality he pleased, for eliding of the debts,—such as minority, or payment.

Which the Lords declared they would take to their consideration, the time of the advising of the oath; as was allowed to Sir James Murray, in the case betwixt the Earl of Kinghorn and him, in January 1666.

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1666. *June* 26. ROBERT BROWN *against* The HEIRS of ANDREW BRYSON.

ROBERT Brown having obtained decreet, before the commissaries of Edinburgh, against Mary and Anna Brysons, as executors to Andrew Bryson, their father, for payment-making to him of the sum of 2500 merks Scots, addebted by the deceased father to him; and having arrested the said sum in the hands of Alexander Bruce of Broomhall, whom he now pursues for making forthcoming:—

In this process compearance is made for Margaret Bryson, and ALLEGES, She must be preferred to the said Robert, as having only right to the foresaid sum;

in so far as, in the bond granted by Broomhall to her father, it was expressly provided, that, failyieing of her father by decease, the money therein contained should be paid to her, conform to the substitution.

Whereunto it was REPLIED by the said Robert Brown, that the foresaid substitution and provision is null, and falls within the compass of the Act of Parliament 1621, as being a provision by a father in favours of his own daughter, in prejudice of him, an anterior creditor; whereupon he has reduction depending.

Whereunto it was DUPLIED, That the provision could not be reduced, unless the said Robert would allege and prove that the father, Andrew Bryson, was bankrupt.

The Lords preferred the creditor, Robert Brown, to the bairn whose name was inserted in the bond; and found, That a father cannot provide his own children to the prejudice of lawful creditors; especially in this case, where the ground of the debt was preëxisting the granting of the bond, albeit it was not constituted by a decreet-arbitral till a year after. &c.

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1666. *June* 28. JOHN SCOTT *against* SIR ROBERT MONTGOMERIE.

John Scott, merchant, having pursued Sir Robert Montgomerie for payment of a debt owing by Sir James Scott of Rossie to him; and having pursued Sir Robert and his lady, as intromitters with the goods and gear of Sir James Scott;

It was ALLEGED for Sir Robert, That his intromission was by virtue of a disposition from Rossie; and whereof he was in possession before Rossie's decease.

To which it was REPLIED, That no respect could be had to the disposition and possession; because it was by Rossie, his good-father, to him, a confident person, being his son-in-law, and in prejudice of a lawful creditor, *et post contractum debitum et realem possessionem;* in so far as the pursuer offers him to prove, that Rossie remained in the possession of the whole plenishing of his dwelling-house of Rossie, where he staid aye and while his death, and while they were intromitted with by the defender; so that he being *in libello*, ought to be preferred to the probation.

The Lords found the disposition of the moveables, with the instrument of possession, sufficient to liberate the defender from a vicious intromission; without prejudice to the pursuer, to pursue for the goods themselves.

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1666. *July* 3. The EARL of CALLENDER *against* SIR ROBERT ELPHINGSTOUN of QUARREL, and OTHERS.

THERE being a spuilyie of teinds, pursued at the Earl of Callender's instance, against Sir Robert Elphingstoun of Quarrel, and divers others; and the Earl, having produced his seasine, and several inhibitions and tacks from the parson of Falkirk:—

The Lords would not sustain process, because the pursuer did not libel upon his tacks, but only as heritable proprietor of the teinds; whereunto the Lords