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

to be made use of against Graham of Hiltoun, who was to have uplifted an imposition upon the shire for public use, within the bounds assigned to him, to be uplifted by a division made amongst the heritors; and which being uplifted, and therewith payment made to Mr Andrew Oswald of another sum, for which the said heritors granted bond, at or about the time of this assignation; and, for instructing thereof, adduced an Act of Parliament appointing the shire to be stented for the said other bond, granted to Mr Andrew in stead of this bond, with several acts of the committees of the shires thereanent: And several witnesses being examined *ex officio;* and the said Mr Andrew Oswald, the cedent; and that the blank assignation remained in Carden's hand, during his life, and, after his decease, in Glorrat's hand during his life, and thereafter in this Glorrat's hand, without filling up the name of the assignee, or any thing done thereupon; being considered;—the Lords found the writs, oaths, and evidences adduced, proved sufficiently, that the assignation was to the behoof and intent foresaid, and that the said intent now ceasing, they declared the bond void and null.

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1672. *January* 10. Pitferren *against* Captain Hamilton.

Pitferren and ————,— having right to the imposition for the light of the May, which right is ratified by an unprinted Act of Parliament 1661, appointing three shillings Scots for every ton of ships belonging to strangers, and one shilling six pennies Scots for the ton of every ship belonging to natives, to be paid by the masters, sailors, or others having interest,—pursues Captain Hamilton for the same, as due by a frigate whereof he was captain; who alleged, That he, not being master, was not liable by the said Act. *2do.* That vessels for war, by the king's commission, were not liable for custom, excise, or any public dues, but did pay the tenth and fifteenth parts to the king and admiral for all. The Lords repelled both the allegeances, in respect that the Act was general, without distinction, and the privateers enjoyed the benefit of the light of the May as well as others; and this being the right of a private party, instituted for a very necessary common good, the tenth and fifteenth penny did not take it off.

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1672. *January* 12. John Kelso and Others *against* The Laird of Bishoptoun.

Robert Kelso having infeft his eldest son John in his lands of Kelsoland, he and John dispone the lands to Bishoptoun, who granted bond for the price, to pay such sums expressed, the most part whereof were such as John was cautioner [for,] for his father: Many other of Robert's creditors being left out, did arrest in Bishoptoun's hand; and he suspending on double poinding, they alleged, That Robert Kelso, having disponed *in meditatione fugæ*, and becoming thereby a bankrupt, could not prefer one of his creditors to another, but according to their diligence; and so could not prefer those in which his son was cautioner to the