

ferred, because he had arrested prior to the filling up of Forth's name in these blank bonds, at least prior to any intimation of his being creditor therein; and so *esto* he had been assignee, a creditor of the cedent's arresting before intimation affects it *nexu reali*.—*Answered, imo*, They denied it was Melfort's money. *2do*, *Esto* it were, Cefnock was not then creditor to Melfort, not having then constitute his debt of the bygone intromissions with his estate.—*Replied* to the *first*, They opposed Blair Drummond's oath, bearing he filled up Forth's name by Melfort's order, which proves the money was Melfort's. To the *second*, Though Cefnock had not then obtained a decret against Melfort, yet he was creditor by the general act rescissory in 1690, and by his special act; and had raised his summons and arrested thereon.—THE LORDS preferred Cefnock on his arrestment, and decerned Blackbarony, the debtor, to pay him. See BLANK WRIT.

*Fol. Dic. v. 1. p. 72. Fountainball, v. 1. p. 766.*

No 86.

1700. February 9.

LIBERTON and EDMINSTON, against The Countess of ROTHES, &c.

IN the competition betwixt James Liberton of Leiden, and Janet Edminston his spouse, against the Countess of Rothes, and other creditors of Edminston of Carden, the Lords found that old Carden having disposed his estate to his eldest son, with the burden of fundry provisions to his other children, and particularly to the said Janet Edminston, the son's creditors could not quarrel the same, nor seek preference thereto, but that the father's creditors might be heard against these provisions, either as latent or undelivered, or that parents cannot burden their estates with sums of money payable to their children till their lawful creditors be satisfied; at least, that they had a considerable visible estate, sufficient to pay all, at the time of their settling these provisions, as was found betwixt the Duke of Queensberry and the Children of Mousewell, (p. 961.) ; and that the father's condition might be inquired into, whether insolvent at that time, yea or not; tho' it is very hard to put creditors upon these indagations; and wherever the debtor's estate is dubious, it is juster that the children should be losers, than that the creditors should want. See the 30th June 1675, Clerk *contra* Stuart, marked both by Stair and Dirleton, with observations on the decision, No 46. p. 917. The creditors urged the late decision, Napier of Tayock *contra* Falside. Fountainhall, v. 1. p. 729. voce PROVISION TO HEIRS and CHILDREN.

*Fol. Dic. v. 1. p. 72. Fountainball, v. 2. p. 87.*

No 87.

Competent to creditors to explicate the solvency of a father granting provisions to his children.

1703. July 1. DAVID REID against GRIZEL WHITSOM, and RUTHERFORDS.

By contract of marriage betwixt the said Grizel and John Rutherford, she is provided to a life rent annuity of 300 merks out of his lands, but with this quality, that in case there were children of the marriage, she, *per verba de presenti*, re-

No 88.

A wife brought a tocher of 2000 merks. She was provided to the