

BENEFICIUM COMPETENTIÆ.

1669. February 24.

The CHILDREN of Sir ANDREW DICK, *against* Their FATHER.

SIR ANDREW DICK having got a plentiful portion by his first wife, and being, after her death, contracted with Dame Lefly; before the marriage, gave bond to the children of the first marriage, for 100,000 merks; whereupon, they pursuing for payment, compearance was made for his Lady and children of the second marriage, who had raised a reduction of the said bond, as being granted betwixt the contract and marriage, in prejudice of the provisions of the said contract:—THE LORDS refused to admit them in this instance, the pursuers having libelled nothing but a personal action, for payment, against Sir Andrew; but reserved their reduction, as accords, in case any thing provided to them should be affected by diligence upon the decret.—Thereafter, it was *alleged* for Sir Andrew, that he being father to the pursuers, was no further obliged in law, but *in quantum facere potest*.—This allegiance was repelled, there being no such indulgence granted to parents by our law. But the LORDS superfeded the extracting the decret until the first of June, that the rigour of the execution might be delayed upon some offers of satisfaction.

Fol. Dic. v. 1. p. 95. Gosford, MS. p. 47.

1687. July.

CAIRNES *against* CAIRNES of Bellamore.

FOUND that in our law parents have not *beneficium competentiæ*.

Fol. Dic. v. 1. p. 95. Harcarse, (SUMMONS) No 928. p. 261.

VOL. IV.

8 P

2

No 1.

A father cannot, by our law, defend against his children, upon the maxim, *Tentur tantum in quantum facere potest.*

No 2.