

SECT. II.

Cessio Bonorum.

No 88.

1628. November 22. WILSON *against* LORD DRUMLANRIG.

JOHN WILSON pursued my Lord Drumlanrig to make some arrested goods forthcoming, which he had arrested in his hands, as appertaining to Archibald Douglas. Compeared another of Archibald's creditors, and *alleged*, These goods could not be made forthcoming to him, because Archibald had made a general assignation of all his goods to the behoof of his creditors, and so he could not be preferred to the rest, but behoved to come in with them equally. *Replied*, That the assignation could not prejudice him of his diligence he had used before, for the *cessio* was to be the debtor's own behoof allenary, to free his person from prison, and concerned not the creditors to put them either in a worse case, or in a better than they were before. THE LORDS repelled the exception.

Fol. Dic. v. 2. p. 172. Spottiswood, (CESSIO BONORUM.) p. 35.

No 89.

1662. January 18. COLQUHOUN *against* HIS CREDITORS.

ALEXANDER COLQUHOUN in Glasgow pursues liberation, *super cessione bonorum*. The defenders *alleged*, Absolvitor, because they offer them to prove, that the pursuer did wittingly deceive them, in borrowing sums, and taking of ware from them, after he knew that he was *insolvendo*, and bankrupt. The pursuer *answered*, *Non relevat*, against liberty, which is a favourable cause, and can be stopped by nothing but fraudulent deeds, since the incarceration, or offering of aliment. The defenders *craved*, That if the LORDS inclined to grant liberty, that the pursuer might be decerned to sit upon the dyvour-stone, and wear the habit. The pursuer *answered*, That was long since out of custom.

THE LORDS, before answer, ordained the pursuer's oath to be taken, upon the defence, whether he did contract these debts after he knew himself insolvent and bankrupt, and they resolved if it was so found, they would not grant him liberty without sitting upon the dyvour-stone, and wearing the habit.