

No 69.

is a general warrant, where his name is foisted in amongst a hundred others, and can never satisfy the act of Parliament requiring horning and caption, which presupposes a previous charge.—*Triplied*, In a parallel case, No 113. p. 1006. between Man and the other creditors of Walls, the Lords sustained a caption on general letters for the excise of brandy, as sufficient to satisfy the act of Parliament, and this is as good.—THE LORDS refused the bill of suspension, and reasons of reduction on the act 1696, in regard there was no declarator depending thereon, and that it could not be received in summarily by way of suspension or exception; but an executed declarator of bankruptcy being produced, the LORDS received the declarator *hoc ordine*.

Fol. Dic. v. 1. p. 172. Fountainhall, v. 2. p. 417.

S E C T. XVI.

Death-bed, how Proponable.

1666. January 11.

GRISSEL SEATON and LAIRD of TOUCH *against* DUNDAS.

No 70.
In a pursuit
against an heir
for payment
of a holo-
graph bond,
death-bed was
found not
competent by
way of excep-
tion, but by
reduction.

GRISSEL SEATOUN, and the Laird of Touch younger, her assignee, pursue — Dundas, as charged to enter heir to Mr Henry Mauld, for payment of a bond of 8000 merks granted to the said Grissel, by the said Mr Henry, her son. It was *alleged* that the bond was null, wanting witnesses. It was *replied*, That the pursuer offered him to prove it holograph. It was *duplied*, That albeit it were proven holograph, as to the body, yet it could not instruct its own date to have been any day before the day that Mr Henry died, and so being granted *in lecto ægritudinis*, cannot prejudge his heir, whereupon the defender has a reduction. It is *answered*, That the reduction is not seen, nor is there any title in the defender produced as heir. It is *answered*, That the nullity, as wanting witnesses, was competent by exception, and the duply, as being presumed to be *in lecto*, was but incident, and was not a defence, but a duply.

THE LORDS repelled the defence upon the nullity of the want of witnesses in respect of the reply, and found the duply not competent, *hoc ordine*, but only by reduction, and found there was no title produced in the reduction.

Fol. Dic. v. 1. p. 175. Stair, v. 1. p. 336.