

1675. February 12. KINNIER against ———.

No 90.

THE LORDS, upon a bill given in by ——— Kinnier, who had obtained a *bonorum*, and a testificate of diverse persons of credit, that he had become insolvent upon occasion of loss and ill debtors, and was otherwise virtuous; they dispensed with that part of the decreet anent the wearing of the habit.

Fol. Dic. v. 2. p. 172. Dirleton, No 252. p. 122.

1675. June 28. LANGLANDS, Supplicant.

No 91.
Found in conformity to Kinnier against ———, *supra*.

A BANKRUPT having obtained a *bonorum* by a bill, desired the LORDS to dispense with his wearing the habit, in respect of an attestation of two persons, that he had become irresposal, upon the account of cautionry, and other occasions mentioned therein; which the LORDS did, albeit some of their number were of another opinion, and did urge, that by the act of Parliament, such persons being infamous, and the LORDS, by an act of sederunt, having ordained, that they should wear the habit, as is the custom in all other nations, that they may be known to be such persons, the LORDS neither could nor ought to dispense with express laws and statutes; and that no respect ought to be had to the attestation, being emitted by private persons having no authority, and not cited nor sworn to that purpose; and the pretence contained in the attestation was most irrelevant.

Clerk, *Gibson*.

Fol. Dic. v. 2. p. 172. Dirleton, No 282. p. 137.

1675. July 3. KEY against HER CREDITORS.

No 92.
When the bankrupt had sworn the ordinary oath in a *cessio*, the Lords refused to put an oath in more extensive terms.

THE pursuer of a *bonorum* having given her oath, that there was no fraudulent deed done since the disposition whereby the pursuer *cesserat* and disposed *omnia bona*;

It was *urged*, That the pursuer should declare also, that no fraudulent deed had been done by her to defraud the creditors, whether before or after the disposition; which was refused by the LORDS, in respect that the ordinary oath given by such pursuers did run in the terms foresaid, that they had made no fraudulent right since the subscribing of the disposition. Some of the LORDS were of opinion, that the pursuer should have declared, that she had done no fraudulent deed at any time; seeing *cessio bonorum* is an extraordinary remedy, indulged to persons who are become *lapsi* upon some extraordinary occasion, without their own fault or fraud, and upon that account deserved favour,

No 92.

which was not to be given to *fraudatores* who at any time had taken indirect ways to prejudice their creditors; and if the pursuer, the very day before she subscribed the cession and disposition, had made an anterior right to prejudice her creditors, it were most inconvenient and absurd, that her oath should only be received in these terms, that she had made no disposition or fraudulent deed since the granting of the disposition in favours of the creditors; and as to the pretence of custom, and the conception of the oath, it ought not to be respected, seeing it cannot be said, that the oath of bankrupts, in the terms that it are now urged, was desired and refused; and if there had been any defect in the conception of the oath, it ought to be helped.

Fol. Dic. v. 2. p. 172. Dirleton, No 292. p. 142.

No 93.

1678. November 12.

WRIGHT against His CREDITORS.

In the case of one Wright in Borrowstounness against his Creditors, it being objected against his *cessio bonorum*, that they offered to prove he had granted a fraudulent disposition of his estate before his incarceration, and so ought not to be liberated till he recal it; "THE LORDS found, that could not hinder his liberation upon this summons, wherein, upon a commission, he had deponed, that he had granted no right or disposition of his estate since his imprisonment, save the disposition he had consigned in the process in favours of his creditors. And for any prior alienations, that they behoved to reduce them on the act 1621, or other competent grounds."

Fountainball, v. 1. p. 19.

1686. November.

BALFOUR against BRUCE.

No 94.

SIR ALEXANDER BRUCE of Broomhall being charged at the instance of Isobel Balfour, he obtained suspension as to personal execution upon consignation of a disposition of his whole estate, as well heritable as moveable, in favour of all his creditors, whereof the charger was one; and made faith at the passing of the suspension, that he had not done any fraudulent deed in prejudice of his creditor, as was appointed by the act of sederunt anent juratory caution. *Answered*, That albeit when suspensions are passed upon certain reasons, the LORDS, by the act of sederunt, allowed suspensions to be expedite upon juratory caution, the suspender always consigning a disposition of his estate which was received in place of a cautioner; yet, when the suspension comes to be discussed, the consigning of such a disposition cannot liberate the suspender from personal execution; for otherwise, such suspensions should have the effect of a *cessio bonorum*, which can only be sustained by way of action, and all the formalities and solemnities required by the law must be observed. THE LORDS