

No 451. 1676. *January 19.* STANFIELD *against* BROWN.

A LIFEERENT infestment of his whole estate, granted by a bankrupt to his wife during the marriage, bearing, "in satisfaction of an anterior contract of marriage, which the husband had cancelled," was not found probative of its onerous cause; and therefore reducible in so far as exorbitant.

Fol. Dic. v. 2. p. 252. Stair.

* * * This case is No 73. p. 954. *voce* BANKRUPT.

No 452. 1676. *December 20.* VEITCH *against* PALLAT.

A BOND granted after horning, bearing to be for the price of wines, was not found probative of its onerous cause against the donatar of escheat, though it did not appear, that the creditor was a conjunct and confident person; but he was allowed to instruct the onerous cause, by the rebel's count-book and books of entry, he being a merchant; and the LORDS refused to sustain a proof simply by witnesses, without such adminicles in writ.

Fol. Dic. v. 2. p. 254. Dirleton.

* * * This case is No 266. p. 11601. *voce* PRESUMPTION.

1697. *January 13.* CRANSTON *against* KYLE.

No 453.

A donatar of escheat was not excluded by a discharge granted by the rebel when he was incarcerated.

CRANSTON, as donatar to the escheat of umquhile James Kyle, pursues Thomas Kyle as his debtor, who *alleged*, Absolvitor, because he had paid his brother before the gift of declarator. It was *answered* by the pursuer, *Non relevat*, because, by the discharge, it appears to have been given when the rebel was incarcerated, which put the defender *in mala fide* to pay, knowing he behoved to be denounced before caption; *2do*, A discharge by a rebel doth not instruct true payment, but it must be otherwise instructed, conform to the act of Parliament against collusions betwixt rebels and their debtors.

THE LORDS refused to sustain the discharge, unless it were adminiculated by instructions, that it was truly paid.

Fol. Dic. v. 2. p. 254. Stair, v. 2. p. 672.

* * * Fountainhall reports this case :

THE LORDS shunned to decide how far the debtor of a rebel was *in tuto* to pay to him before the escheat was gifted, or the declarator intented, which is a great concernment, especially where he knows he is at the horn. It is like