

repelled the reasons of suspension, and found the suspender liable to personal execution, notwithstanding of the consigning a disposition of his estate.

No 94.

Fol. Dic. v. 2. p. 173. Sir Pat. Home, MS. v. 2. No 817.

1693. January 20.

——— against GRAHAM.

No 95.

BETWIXT ——— and George Graham merchant, who since his *cessio bonorum* granted a bond of corroboration to one of his former creditors contained in the *cessio*; and he having incarcerated him, he craves to be liberated on his former decret of *bonorum quoad* him. THE LORDS found his granting this new bond, (though only in corroboration) was a passing from his privilege of *cessio bonorum quoad* him; else what could the clause of registration for execution signify? and that he behoved to take a new decret.

Fol. Dic. v. 2. p. 172. Fountainball, v. 1. p. 549.

1694. February 13.

JAMES WATSON, Litster in the Canongate, against His CREDITORS.

No 96.

His reason of suspension was, that he was willing to put his whole creditors in possession of his land, and produced a disposition thereto in their favours, with exception only of his work-house and looms, and for which he was content to pay mail to them. THE LORDS being dissatisfied with these general suspensions, were once for referring him to pursue a *bonorum*, but afterwards allowed the Ordinary to pass suspension against all such creditors as were in possession (for they thought it hard that they should both have his land and his person;) but to refuse the bill of suspension as to those who were not in possession, or who were content to renounce the benefit they might have by the donatar of his escheat's back-bond to the Exchequer, for they could not retain both.

Fol. Dic. v. 2. p. 173. Fountainball, v. 1. p. 608.

1694. December 13.

DARLEITH, &c. against BRUCE of Kinnaird.

No 97.

His reason of suspension was, to be free of personal execution, because his estate was sequestrated for the behoof of his creditors; and they being in possession, cannot trouble his person. THE LORDS repelled the reason, unless they would say, that the creditor-charger was in possession and payment of his whole annualrents; though some thought this was not enough, unless he was also paid of his principal sum. Yet the act 1672, anent adjudications, frees the debtor's person, if he has put his creditors in possession, and delivered a pro-

No 97.

gress of writs, and ratified this right. But if the pretence of estates being under factories were enough, it would be a protection to the most part of the bankrupts in Scotland.

Fol. Dic. v. 2. p. 173. Fountainhall, v. 1. p. 650.

1707. November 4.

Dr SCOT against His CREDITORS.

No 98.

DR ROBERT SCOT, late Dean of Hamilton, craves a suspension against several of his creditors, on this reason, he had made a general disposition *omnium bonorum* in their favours of all his estate, both real and moveable; upon which most of them had given him a supersedere not to trouble his person, seeing he was hopeful to recover a coal on his lands of Kinglassie, that would satisfy all his debts. *Answered*, We never accepted of your disposition, nor have any benefit by it; neither are we consenters to the supersedere, and so the reason can never militate against us. THE LORDS thought this a protection on the matter, and therefore refused the bill, as they did also to Cornwall of Bonhard, against Janet Pitcairn and others of his creditors, for the same reason. If they had offered caution, it is likely their bills of suspension might have been granted, for the creditors thereby got an additional security; but they were both craved on juratory caution, and were therefore refused.

Fol. Dic. v. 2. p. 171. Fountainhall, v. 2. p. 390.

1751. November 19.

MALLOCH, Petitioner.

No 99.

A *cessio bonorum* refused, so far as it related to an assythment for murder.

DAVID MALLOCH, who, by the sentence of the Court of Justiciary, was convicted of the murder of John Fulton of Auchinbathy, having obtained a remission, the Court of Justiciary refused to admit the same until caution should be found for such assythment as should be modified by the Exchequer; and that Court having modified L. 100 Sterling, for which he *alleged* disability to find caution, he pursued a *cessio bonorum* before the Court of Session, in which the widow of the deceased compeared and *objected* to the *cessio*, so far as the same might relate to the assythment.

And accordingly, the LORDS found, "That the *cessio bonorum* could take no place, in so far as concerns the assythment;" and refused a petition against that interlocutor without answers.

The *cessio bonorum* is a privilege only granted to debtors in civil debts, and not to such as come under debts for their crimes. The act of grace also proceeds upon the same analogy. If a *cessio* should extend to such a case, a beggar might *impune* commit such crimes as only infer damages, as he might, next breath after sentence, get free by a *cessio bonorum*. In like manner, the order-