

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.*

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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.*

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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

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, &amp;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-