the vitious intromission, and did stand ay and while it was redeemed; for notwithstanding of the tenor of the said act, the Lords did not sustain that nullity by way of exception or reply.

No 68.
no heritable right requiring the production of the rights of authors.

THE LORDS found the nullity competent by way of exception, it being no heritable right, requiring the production of authors' rights; but in respect of this colourable title, restricted the vitious intromission to the single value.

Fol. Dic. v. 1. p. 172. Stair, v. 1. p. 734.

1708. *January* 10.

The CREDITORS of JOHN DAVIE, Brewer, Competing.

No 69.
It was alleged in a suspension, at the instance of some creditors of a party *oberatus*, against another creditor, that he had taken sasine upon his heritable bond, after the debtor was become bankrupt. The Lords having refused to take in this allegeance by way of suspension or exception; and thereupon an executed declarator of bankruptcy being produced, and it being contended, that it should be reserved to come in *via ordinaria* by the course of the roll, yet the Lords received in the declarator *hoc ordine*.

THE said John finding his debts to exceed his effects and estate, either real or personal, he makes a disposition of the whole, in favours of his creditors, equally amongst them, conform to a list. John Watson, who has assigned his debt to John Philip, servant to the Earl of Seafield, Chancellor, being creditor to him by an heritable bond, in 1702, for 5000 merks, when the rumour of his breaking rises, he takes infeftment thereon, on the 4th December 1704, and pursues a poinding of the ground, and, after some debate with the other creditors, there is a decreet preferring him, which was extracted on Christmas day last, of which there is a suspension offered, on these reasons; that it was surreptitiously and precipitantly given out, very soon after its reading in the minute-book, and after a scroll was demanded; and so craved to be reponed, and heard against the validity of that infeftment; because, by the 5th act 1696, sasine taken on a disposition or heritable bond, though never so long prior, yet, if after his becoming bankrupt, is declared to give no preferenee; but *ita est* he was notourly insolvent, and *in meditatione fugæ*, and running to the Abbey for sanctuary, when this sasine was taken, and so must reduce on the said act.—*Answered*, That they opponed the act of regulations 1672, establishing competent and omitted in all decreets *in foro contradictorio*; and so it is, this was not proponed in the first instance, and consequently not receiveable now; and it had stood 24 hours in the minute-book after reading; and the being extracted on Yule day is no nullity. And *esto* they were reponed, yet the reason of reduction is noway relevant; for the said act 1696, fixing the marks, characters, and standard of a bankrupt, requires expressly horning and caption before the deed quarrelled, which cannot be subsumed in this case.—*Replied*, That, on the 3d of December 1704, the day before his taking the sasine, there is a warrant of imprisonment against him, at the instance of the Commissioners of Supply and Excise, for his deficiencies in brewing, conform to their power by the 14th act 1661, empowering them to quarter and imprison for the excise.—*Duplied*, This does not quadrate with the terms of the act 1696, which requires horning and caption, whereby creditors, by searching the registers, may find them; but this

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.

SECT. XVI.

Death-bed, how Proponable.

1666. *January* 11.

Grissel Seaton and Laird of Touch *against* Dundas.

No 70.
In a pursuit gainst an heir ir payment f a holo- raph bond, eath-bed was ound not ompetent by ay of excep- ion, but by eduction.

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 was *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.