creditors by preferring one to another, and so prejudge the anterior diligence of any. When a man is to be esteemed bankrupt, whether *quando debita excedunt bona*, or when he has a *bonorum*, or when he lies registrate at the horn year and day, or when he is registrate though year and day be but *in cursu, in medium relinquo.* The Lords have oft now found that an inhibition reaches *non solum bona immobilia presentia* belonging to the debtor at the time of the serving the inhibition, but likewise *omnia futura et acquirenda*, all heritages he conquishes thereafter during his lifetime. *Vide* Hadington, *23d Feb.* 1623, *Seaton* against *Moriston.* It may be said a man inhibited cannot assign nor discharge a reversion; *ergo*, neither renounce a wadset. I answer, the difference is very wide; the assigning or discharging a reversion is a voluntary deed, whereunto he cannot be compelled; whereas the taking his money and renouncing his right, is a deed which he is either actually compelled to do, or at least may be by virtue of the obligement given by him for reversion.

This case is now determined by the printed act of Sederunt, 19*th February* 1680. *Vide supra No.* 191, [30*th June* 1671.]

Advocates' MS. No. 281, *folio* 118.

1671. *December* 5. SIR WILLIAM BENNET of Grubet *against* MOIR of Otterburne.

IN the reduction pursued at the instance of Sir William Bennet of Grubet against Moir of Otterburne, of the said Otterburne his right to the lands of Greinlaw; it was ALLEGED for the defender, That he brooked Greinlaw as part and pertinent of his lands of Otterburne, within which it lay naturally and locally.

To this it was ANSWERED, That the Youngs of Otterburne, authors to this defender, were only kindly tenants for this roum to Sir John Ker of Litleden, whose right the Earl of Louthian having acquired, he disponed the same to this pursuer's father; and for proving this, the disposition made by the Youngs to Mr. William Moir of Greinlaw clearly evinces, for they dispone only their kindness of the said roum. *2do*, It is offered to be proven that the Youngs did service to Litleden for the said roum as kindly tenants, by riding and otherwise, and that they were poinded for not riding when required.

REPLIED, Their disponing the kindliness of the roum *non relevat*, seeing an heritor may discharge and renounce his kindness. *2do*, Their service of riding, and their being poinded for not riding, *non relevat*, unless they say it was for thir lands; whereas the defender offers him *positive* to prove that they were tenants to Litledean in other lands, and it was for that they rode and were poinded.

The Lords ordained both of them, before answer, to lead witnesses upon their several allegeances. And a commission being granted for that effect, the deposi-

tions of sundry witnesses for both parties were taken and reported. The Lords falling to examine the witnesses, there were many things objected against Grubet's witnesses: some of them common beggars, others living on the poor's box; one got a boll of meal from Grubet to depone; one at his death declared much sorrow, and craved leave to rectify the deposition he had made in that affair, and several of them were vitiated and blotted. The Lords found they would re-examine the witnesses yet on life, and any others that either party would adduce.

In this process there was a declinator given in against the advocate, because the pursuer and he had married two sisters. The Lords did not receive it; but it miserably cruciated the advocate to see his justice called in question. In 1678 Newbyth sat and voted in Mr. Patrick Home's cause, though he had married his brother's daughter. *Infra, July* 1676, *No.* 492, § 3.

Advocates' MS. No. 283, *folio* 119.

1671. *December* 5. WILLIAM DUFF *against* FORBES of Cullodin.

THIS was a competition about the rights of some fishings which held feu of the burgh of Innerness.

ALLEGED, Against Cullodin's seasine thereof that it was null, because it proceeded upon a resignation in the hands of the magistrates and council of the town of Inverness, and the seasine was only subscribed by one bailie and the clerk, (for by an inveterate custom past all memory of man, used within this burgh, contrary to the use of all the rest of the kingdom, the feuars and vassals of the said burgh get no charters, but allenarly a seasine on their resignation, signed by the haill magistrates of the town;) whereas, by the custom of the said burgh, it should have been subscribed by the haill magistrates, as Duff's is.

To this it was ANSWERED, That the manner how Duff's seasine was given was as much contrary to the common form received in other places, as the manner wherein Cullodin's was given, seeing he had no charter to shew no more than Cullodin. And as for that pretended nullity of his seasine being only signed by a bailie and the clerk, he offers to prove it is a more general, more universal, and more received custom in the burgh of Inverness than that other, of being subscribed by the haill magistrates.

Whereupon the Lords granted a commission for trying which of the two was the custom of that burgh, and if both of them were in use, which of them predominated and prevailed most; which being reported, and the report coming to be advised, the Lords found more instances adduced of seasines given after the manner of Cullodin's than of the other, (one bailie doing it *ex presumpto mandato reliquorum,)* and, therefore, declared they would sustain Cullodin's seasine, and all seasines given before the date of thir presents, either after the one manner or the other, they being both equally informal, because *in talibus error communis facit jus;* but *pro futuro*, they would make an act of sederunt, inhibiting all such customs of giving seasines which are either contrary to, or derogatory and exorbitant from the common and municipal law; under certification, that whatever resigna-