No 67.
gularly need reduction, yet in a personal right, the matter depending before the Lords, and the parties poor, such a deed was found simply null.

Isobel and Margaret Simes, he lends a sum of 400 merks to Thomas Brown, and takes the bond on these terms, to be paid to him and the said Marion Brown, the longest liver of them two in liferent, and after their decease, to Margaret and Isobel Simes. The said Isobel and Margaret having pursued the said Marion before the Commissaries, for delivery of this bond, as belonging to them after their father's death, the Commissaries assoilzied the said Marion from delivery of the bond, and found it did belong to the said Marion herself, not only as to the annualrent, but as to the stock, because her husband having no other means but this bond, and not having fulfilled her contract, she had confirmed herself executrix creditrix in this sum, and behoved to exclude her husband's two daughters of a former marriage, who were provided, and forisfamiliate before. Of this absolvitor the daughters raised a reduction on this reason, That this sum could not be confirmed, not being *in bonis defuncti*, the father being but liferenter, and the daughters fiars, and though they were but as heirs substitute, they exclude executors, and need no confirmation; *2dly*, The husband being but obliged to employ this tocher, and 200 merks more, the pursuer must instruct that the tocher was paid; *3dly*, The wife intromitted with as much of her husband's goods as would satisfy her provision.—It was *answered*, That the wife not being obliged for her tocher, but another party who was *solvendo*, and neither being obliged, nor in capacity to pursue, therefore could not now, after so long a time, be put to prove that the tocher was paid; and for her intromission she had confirmed and made faith, and the pursuers might take a dative *ad omissa*, if they pleased, but could not, *hoc ordine*, reduce or stop her decreet upon compearance.

The Lords found, That albeit in form the bond should have been reduced, as being done *in fraudem* of the wife, as being a creditor, and thereafter confirmed; yet now the matter being before the Lords, and the parties poor, they found the husband's substitution of two provided daughters by a former marriage null, as to the wife's provision, by the act of Parliament 1621, without necessity of reduction, the matter being but a personal right; and found the wife not obliged to instruct the tocher paid; and therefore assoilzied from the reduction, but prejudice to the pursuers to confirm, a dative *ad omissa*.

Fol. Dic. v. 1. *p.* 172. *Stair, v.* 1. *p.* 577.

No 68.
A disposition to a conjunct and confident person, against the act of Parliament 1621, was found null by exception, it being

1671. *July* 16. Bowers *against* Cowper.

Bowers pursues the Lady Cowper, as vitious intromitter with the Lord Cowper's goods and gear, for payment of a debt of his; who *alleged* absolvitor, because she had a disposition from her husband of his moveables.—It was *replied*, That the disposition being between two most conjunct persons, without a cause onerous, was null by exception by the act of Parliament 1621, against fraudulent dispositions.—It was *answered*, That the disposition behoved at least to purge

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