

DIVISION III.

Decisions upon the act 5th Parliament 1696, declaring
Notour Bankrupts.

S E C T. I.

Circumstances which infer Notour Bankruptcy.

1698. February 15. CHARLES GRAY against HENRY BAIRD.

In a competition betwixt Charles Gray and Henry Baird, two creditors of Hary Mein's, this point came to be debated, That Baird's precept and assignation was null, though prior to Gray's arrestment, because, within 60 days after Mein's signing the precept, he fled, and took sanctuary in the Abbey, and became notourly insolvent; and so, by the 5th act of Parliament 1696, the voluntary deed within the said three score days must be repute an unlawful preference, and gratification of one creditor to another, and so is null.—*Answered*, Insolvency and flying are but two of the requisites by the act; the debtor must be also under horning and caption before the granting of the deed.—*Replied*, The act does indeed require, that diligence be done against the debtor, but mentions not that it should be before the deed quarrelled; for then it could be reduced on the act of Parliament 1621; and here it is offered to be proven, there was horning and caption against him before the 60 days, and particularly Hary Baird's own horning.—*Duplied*, His own diligence may be well beneficial to him, but can never be detorted to his prejudice.—*Triplied*, The act of Parliament does not distinguish whose horning it be, whether the receiver of the voluntary deed, or another's.—THE LORDS inclined to think the flying within the 60 days did not annul it, unless there was horning and caption against him before the voluntary deed. But the case being on a new act deserves to be considered.

Fol. Dic. v. 1. p. 81. Fountainball, v. 1. p. 824.

1702. July 24. JAMES MAN against WALES and his CREDITORS.

ANDREW WALES, merchant and shop-keeper in Dundee, did, upon the 14th of February 1700, grant several bonds to his creditors; and, of the same date, disposed his household plenishing, ware in his shop, debts, and whole moveables, for further security and payment of these bonds.

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In a competition betwixt two creditors of a bankrupt, the Lords inclined to think, that the bankrupt's flying within 60 days, did not annul a voluntary right granted by him, unless there had been horning and caption previous to the deed.

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Horning and caption upon general letters, found sufficient to infer notour