

1785. July 12.

WILLIAM MACCUBBIN *against* THOMSON and Others, his Creditors.

MR MACCUBBIN, when suing for the benefit of the law in the process of *cessio bonorum*, was opposed by his Creditors, on this ground, That though there had not arisen any suspicion of fraudulent concealment of his effects, yet that his insolvency had proceeded, not from unforeseen losses, but merely from an expensive style of living, unsuitable to his income, and inconsistent with any reasonable prospect of paying the debts he contracted.

The majority of the Court considered the above as a sufficient reason for with-holding that *febile remedium*; and therefore,

THE LORDS found, " That the pursuer was not entitled to the benefit in question."

Act. Honyman.

Alt. H. Erskine.

S.

Fol. Dic. v. 4. p. 140. Fac. Col. No 220. p. 347.

No 108.

The benefit refused, if the bankruptcy be occasioned by extravagance.

1786. March 10. WILLIAM FRASER *against* HIS CREDITORS.

FRASER, a trader, who brought an action of *cessio bonorum*, acknowledged, on being required to produce his books of account, that he had not kept any such; upon which it was

*Observed* on the Bench; That he had thus rendered it impossible to prove, in terms of law, that his bankruptcy had been occasioned by innocent misfortunes; and therefore,

THE LORDS found the pursuer not entitled to the benefit in question.

Act. Corbet.

Alt. Nairne.

S.

Fol. Dic. v. 4. p. 140. Fac. Col. No 269. p. 416.

No 109.

A person in trade who omits to keep account-books, not entitled to the benefit of *cessio*.

1791. March 5. MACDOWAL *against* MOLIERE.

IN an action of damages for seduction, instituted by Catharine Moliere against Macdowal, the Court found her entitled on that account, to a certain sum of money, for which she used ultimate diligence against him. Having been incarcerated at her instance, he raised a process of *cessio bonorum*, in which she appeared, and maintained, that he ought not to receive this benefit to her prejudice, to whom he owed a debt *ex delicto*, for reparation of the injury she had sustained from him.

The Court took notice, that in cases of this kind, there had occurred some contrariety in the decisions. In the case of Malloch, 19th Noyember 1751,

No 110.

One imprisoned for a claim of damages, tho' *ex delicto*, entitled to the benefit of *cessio*, if the bankruptcy arose from other causes.