

No 97. gress of writs, and ratified this right. But if the pretence of estates being under factories were enough, it would be a protection to the most part of the bankrupts in Scotland.

*Fol. Dic. v. 2. p. 173. Fountainhall, v. 1. p. 650.*

1707. November 4.

Dr SCOT against His CREDITORS.

No 98.

DR ROBERT SCOT, late Dean of Hamilton, craves a suspension against several of his creditors, on this reason, he had made a general disposition *omnium bonorum* in their favours of all his estate, both real and moveable; upon which most of them had given him a supersedere not to trouble his person, seeing he was hopeful to recover a coal on his lands of Kinglassie, that would satisfy all his debts. *Answered*, We never accepted of your disposition, nor have any benefit by it; neither are we consenters to the supersedere, and so the reason can never militate against us. THE LORDS thought this a protection on the matter, and therefore refused the bill, as they did also to Cornwall of Bonhard, against Janet Pitcairn and others of his creditors, for the same reason. If they had offered caution, it is likely their bills of suspension might have been granted, for the creditors thereby got an additional security; but they were both craved on juratory caution, and were therefore refused.

*Fol. Dic. v. 2. p. 171. Fountainhall, v. 2. p. 390.*

1751. November 19.

MALLOCH, Petitioner.

No 99.

A *cessio bonorum* refused, so far as it related to an assythment for murder.

DAVID MALLOCH, who, by the sentence of the Court of Justiciary, was convicted of the murder of John Fulton of Auchinbathy, having obtained a remission, the Court of Justiciary refused to admit the same until caution should be found for such assythment as should be modified by the Exchequer; and that Court having modified L. 100 Sterling, for which he *alleged* disability to find caution, he pursued a *cessio bonorum* before the Court of Session, in which the widow of the deceased compeared and *objected* to the *cessio*, so far as the same might relate to the assythment.

And accordingly, the LORDS found, "That the *cessio bonorum* could take no place, in so far as concerns the assythment;" and refused a petition against that interlocutor without answers.

The *cessio bonorum* is a privilege only granted to debtors in civil debts, and not to such as come under debts for their crimes. The act of grace also proceeds upon the same analogy. If a *cessio* should extend to such a case, a beggar might *impune* commit such crimes as only infer damages, as he might, next breath after sentence, get free by a *cessio bonorum*. In like manner, the order-