writ that the cedent was, the time of the assignation, debtor to himself, that the assignation could not be sustained, and it was not found sufficient probation of the debt, that the assignee offered to give his own oath thereon, alleging no other probation to be required by the act of Parliament anent bankrupts; which the LORDS found was not sufficient, but was found ought to be proved otherwise than by the assignee's oath, specially because there was evident presumption of fraud, qualified betwixt the said assignee and the cedent, who were confident persons, being two brethren, and there were some circumstances qualified, whereby it appeared that there was simulation betwixt them, and consequently that the assignee could not dispone the same by making election to pay such of the cedent's creditors as he pleased, and thereby to prejudge another creditor, and which other having arrested and comprised that same debt assigned, albeit after the assignee was denuded in favours of other creditors whose debts were true and instructed, yet the said creditor compriser was preferred as said is, because of the defect in the assignation made by the one brother to the other, who could not shew any debt owing to him for which it was made.

No 439.
nee would instruct otherwise than by his own oath that he wa creditor.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 252. Durie, p. 418.

1630. *January* 22. HOP-PRINGLE *against* KER.

No 440.
A bond for borrowed money, granted by a bankrupt to a conjunct and confident person, found to prove its onerous cause.

IN a reduction of a bond of 40,000 merks granted by the Lo. Borthwick to Mark Ker, and whereupon Mark had comprised, at the instance of the said Hoppringle's prior creditors to the Lo. Borthwick, founded upon the statute of dyvoury, viz. because the said bond was made to a confident person without any true, just, or necessary cause, and in the prejudice of the pursuer, his anterior creditor, subsuming *in terminis*, as the act bears; the LORDS found, That the pursuer ought to prove that part of the reason, viz. that the bond was made without any just or necessary cause, either by writ or by the oath of the party-receiver of the bond, and that they would not respect it as a negative, which proved itself; neither found it necessary that the creditor, receiver of the bond should be holden to prove any cause of the debt anterior to the bond, or by any other manner of way, but by the bond confessing the debt, which was sustained; for, when parties borrow monies, or contract mutually, there is no other way to prove the borrowing or contracting but by the writ then made at the time when the same is done; for there can be no other thing extant therefor before the writ then made, as is daily seen in all bargains and obligations betwixt parties; and therefore the LORDS found, That the reducer of any such bond upon that act ought to prove that negative, and that the said act required and

No 440. ordained the same to be proved, either by writ or oath, as said is, and that no other probation ought to be admitted thereupon.

Act. *Advocatus & Cunninghame.* Alt. *Nicolson & Craig.* Clerk, *Gibson.*
Fol. Dic. v. 2. p. 250. Durie, p. 484.

*** Durie reports a similar case, 22d June 1642, Nisbet against Williamson, No 23. p. 2774. *voce* Competition.

1632. *January* 17. Skene *against* Betson.

No 441.

One having disponed his whole heritage to his son-in-law, upon the narrative of a price paid, whereby he was rendered bankrupt, the disposition was found probative, unless redargued by the disponer's oath.

Fol. Dic. v. 4. p. 251. Durie.

*** This case is No 25. p. 896, *voce* Bankrupt.

No 442.
Where the disposition bore, in general, to be for sums of money, the heir was obliged to instruct the onerous cause.

1634. *March* 21. Watson *against* Orr.

In a process upon the passive titles against an heir convened as successor *titulo lucrativo*, the narrative of the disposition, bearing a price truly paid, was found probative, unless redargued by the defender's oath.

Fol. Dic. v. 2. p. 253. Durie.

*** This case is No 105. p. 6767 *voce*, Passive Title.

No 443.
A right granted by a bankrupt to his son *in familia*, reduced as gratuitous, tho' it bore to be for sums of money and onerous causes, and the defender offered his oath in supplement.

1639. *March* 9. Riddoch *against* Younger.

One Riddoch reducing some dispositions made by one Younger to his son Younger, upon the reason of the act of dyvoury, as done by a bankrupt to his own son without just and true onerous causes in defraud of the pursuer, a true and just creditor; and the defender opponing his right, which bore to be made "for sums of money and onerous causes;" against which positive clause the pursuer can never be heard to allege the same to be made without payment of any sums of money, except that he should prove the same by the oath of the receiver; and the pursuer *replying*, That in this case the presumptions were so manifest for him, and for the truth of his reason, that it laid a necessity upon the defender to prove and show that he had paid sums for this right made to him, seeing it is made by the father to the son, who was a young man unmarried, remaining in house with his father, and who cannot condescend upon any