

No 2. Abbey, especially for vivers. To the *second*, He was personally apprehended, and so could not pretend ignorance, and does not condescend on any thing to purge his contumacy at all; and the only thing he seemed to controvert was, the exorbitant articles of the account.—THE LORDS repelled his reasons of suspension, and refused his bill.—Some doubted of their having a prison, and thought he should have been transported to the Canongate, or Edinburgh tolbooth; but then his other creditors might have arrested him, which they cannot so well do in the Abbey, which is a sanctuary; *sed quo jure*, see it debated *alibi*; if it be as the King's palace, and of old a religious convent as well as a prison.

Fol. Dic. v. 2. p. 361. Fountainball, vol. 2. p. 442.

1709. July 21.

HALIBURTON *against* STEWART.

No 3.

A proof allowed whether a debtor had been fraudulently detained out of the Abbey after 12 o'clock on Sunday night, when a caption was executed against him.

Effect of an act of indemnity.

PATRICK HALIBURTON having contracted debts near to L. 3000 Sterling, and having secretly conveyed away his effects, he retired to the Abbey; but Sunday being a day whereon they are secure against all captions or other diligences, he came up to the house of Mr Stewart, one of his creditors, and having supped with him, and thereafter staid till it was past 12 o'clock at night, he is seized upon by a messenger, by virtue of a caption, and put in prison: whereupon he gives in a complaint to the Lords, that having come to Edinburgh, on a Sunday, to treat with Mr Stewart anent his satisfaction and security, and his own liberation, he did trepan and ensnare him by pretending much kindness, and inviting him to supper, and then protracting the time, in overtures and terms of accommodation, till the town clock struck 12 at night; and then he had a messenger prepared to take him to prison, by a most illegal and treacherous practice; all the preparatory steps being done on the Lord's day; which is all one as if he had executed his caption on the Sunday, contrary to our law and decisions, and the prohibition of the Roman Emperors, *l. 11. C. de feriis*, to secure that holy day from profanation. *2do*, The Queen, by her indemnity, has pardoned all offences, contempts, forfeitures, and outlawries, preceding the 19th of April last, which is the date of her indemnity, which will extend to denunciations and captions, prior to that date; and *ita est* this caption was raised long before, and escheat being a casualty falling to the Queen, by the debtor's contumacy and delinquency, she may either gift it or discharge it, as she pleases; and having done it, he could not be warrantably incarcerate by any denunciation or contempt, prior to the said act.—*Answered*, He staying till the Monday morning, there was neither law nor reason to stop their legal diligence; and, for the Queen's pardon, it only indemnifies criminal contempts and outlawries: and if it were stretched to civil rebellion for debts, it would introduce a strange confusion, and be like the Roman *novæ tabulæ*, or the Jewish year of jubilee, which discharged all former debts; and let indemnities for a hundred years back be consulted, it was never pretended that any of them discharged captions or legal diligences, to compel

debtors to satisfy their just and lawful debts.—THE LORDS allowed trial to be taken of the time of his being apprehended, and the manner how he was detained, or if he offered to go back to the Abbey, and was enticed to stay, and hindered to go out; but repelled the second reason founded on the Queen's indemnity, and found it did not extend to take off the effects of captions for civil debt, prior to the date thereof.—For executing captions on the Sunday, see Durie 4th July 1628, *Rachlet contra Lauder*. (See LEGAL DILIGENCE.)

Fol. Dic. v. 2. p. 361. Fountainhall, vol. 2. p. 518.

No 3.

1741. June 12.

HAMILTON of Redhouse *against* JAMES HALIBURTON, Bailie-Depute of the Abbey of Holyroodhouse, &c.

REDHOUSE having retired to the Abbey, information was exhibited to the bailie by some of his creditors, setting forth, That he had money in his pockets, but that he refused to pay any of his debts with it; and that he had said he was resolved to fly out of Scotland with it; therefore craving warrant to apprehend and search Redhouse, and to take what money should be found in his pockets from him: The bailie accordingly, without requiring an oath of the informers, or granting a warrant to bring Redhouse before him for examination, granted the desire of the creditors petition *against* Redhouse, who had not been booked in the bailie's books; and which warrant having been accordingly executed, and L. 5 Sterling taken from him, he, to redress these grievances, brought a process *against* the bailie, &c. for damages.

THE LORDS found, That, in consideration of the act of the Abbey-court in the year 1697, and practice agreeable thereto, of putting captions in execution *against* persons not booked, it was lawful for the bailie of the Abbey to grant his concurrence complained of, for putting the caption in execution. And found, That, in consideration of the signed information exhibited to the defender Haliburton, by the other defenders, it was lawful for Haliburton to grant the warrant complained of to seize and search the pursuer.

Fol. Dic. v. 4. p. 260. G. Home, p. 287.

No 4.
The bailie of the Abbey found entitled to grant warrant to search for money about a debtor, who had taken refuge there, but had not been entered in the books.

1749. July 26.

HUSBAND *against* CAIRNIE.

IN an action at the instance of Paul Husband merchant in Edinburgh, *against* Alexander Cairnie, late prison-keeper in the Abbey of Holyroodhouse, for payment of a debt of L. 8:7s. Sterling, due to him by George Beveridge, and which Beveridge had contracted while in sanctuary in the Abbey; on the ground, that Carnie, while jailor of the Abbey prison, had allowed Beveridge, imprisoned at the instance of another creditor, to go out of prison, although arrested by

No 5.
The keeper of the Abbey prison liable, if a debtor escape through his fault.
The manner of the imprisonment in the Abbey prison.