

of stockings, to be applied in payment of a bill due by Gordon to one in London. Morison sold the stockings and discounted the bill, but did not pay Gordon's bill, and broke in March 1744. In April a commission of bankruptcy went out against him, and he obtained the Chancellor's certificate of his having complied with the statute. Gordon took a decret against him in this Court; and Morison having come to Scotland, Gordon took him with caption. Morison presented a bill of suspension and liberation, and quoted the two precedents on the preceding page. The Court was divided in opinion, but upon the question past the bill upon caution *judicio sisti*, when he shall be called for. *Referente* Strichen. See FOREIGN.

No. 22.

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1748. July 19, 23. M·KINNIE and Others *against* FORRESTERS.

WE found the charge of fraudulent bankruptcy against George Forrester, and that Robert his brother was partaker with him in his fraud, and therefore declared them infamous in the words of the act 1621. Ordered them to be pilloried at Glasgow, (where the fraud was committed,) 10th August next, with a paper on their breasts, "Infamous fraudulent bankrupt," and then to be banished to the plantations in America for seven years. See No. 3. *supra*. (See Kilkerran's report of this case, DICT. APPEND. II. *voce* BANKRUPT and *voce* DELINQUENCY.)

No. 23:  
Punishment of  
fraudulent bank-  
ruptcy.

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1749. November 7.

CREDITORS of CASTLE-STEWART, *i. e.* DICKSON *against* MARGARET MITCHELL.

No. 24.

IN a reduction on the act 1696, of a disposition to the superior, whereon there followed resignation *ad remanentiam*, but no sasine, the Lords found that the disposition was to be accounted as of the date of that resignation.

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1750. July 10.

CREDITORS of JOHNSTON, *Competing*, *viz.* EARL HOPETOUN *against* NISBET of Dirleton and INNES.

No. 25.

A MERCHANT incarcerated a few days on a caption and then set at liberty; and granting a bond of corroboration of the debt whereon infetment followed, and continuing many months to keep open shop and to trade as for-

No. 25. merly, was not found to have been rendered by that imprisonment a notour bankrupt in the sense of the act 1696, so as to annul that infetment, or other infetments granted within 60 days before, though he was found to have been then insolvent, and to have continued so. (See DICT. No. 230. p. 1190.)

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1751. *January 26.* FORBES *against* BREBNER and Others.

No. 26.  
Payments in  
money not re-  
ducible upon  
the act 1621.

A DEBTOR, a merchant, after he was distressed by diligence, by horning, and caption, paid three or four debts before he was in prison, but one of them, the very morning of the day on which he was incarcerated. The creditor arrested in their hands, and by their oaths the fact came out as above, and the creditor insisted on the second branch of the act 1621, that these were voluntary payments after his diligence, and on the act 1696. The sheriff assoilzied the defenders; and it was brought before me by advocacy; and I affirmed the sheriff's judgment; and the pursuer having reclaimed, the Lords refused the bill without answers; and my reason was, that though the act 1621 mentions voluntary payments after diligence, yet it is after diligence duly to affect the subject, and no diligence duly affects money in the debtor's pocket; and the act 1696 is only against assignments and other deeds giving partial preference, but says nothing of payment of money; and there is no precedent in all our books of repetition of money so paid. (See DICT. No. 131. p. 1042. and No. 199. p. 1128.)

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1751. *January 29.* JOHNSTON *against* HOME of Manderston.

No. 27.  
*Novum debitum.*

IN May 1747, Burnet, a brewer, was incarcerated on a caption for debt, and soon paid the debt, and was liberated. In July 1747, Thomson, a weaver, brother-in-law to Burnet, got credit in a cash-account with the British Linen Factory for L.100; and Home of Manderston, his cautioner; for whose relief Thomson and Burnet gave him an heritable bond on some houses of Burnet's, to which Burnet had only a personal disposition from one Moffat, who was the person last infet.—October 6th, Burnet the brewer was incarcerated by Johnston on a caption for payment of a bill of L.55 sterling, dated in February, and payable at Lammas 1747, and was liberated on the act of grace; and Thomson having also failed, Home of Manderston took infetment on Moffat's procuratory, and paid the debt to