

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 infestment, or other infestments 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.)

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.)

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 infest.—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 infestment on Moffat's procuratory, and paid the debt to