

No 5.

Husband; and although Husband had paid Carnie the ordinary dues, and had advanced to him money for the prisoner's aliment, as usual: Some of the Lords doubted if any action lay against the prison-keeper of the Abbey at all; for that it was not clear, *1mo*, That there could be a prison within a royal asylum; *2do*, That even in a royal borough such action lay against the jailor.

But as such prison, for debts contracted within the Abbey, has been in use by long practice; and as the same doubt was formerly made and over-ruled, as observed by Fountainhall, 12th June 1708, Cockburn supplicant, *No 2. b. t.*; and as the Court thought, that where an escape happened by the fault of the jailor, he would be liable in the debt as damage: THE LORDS, before answer, allowed a proof as to the usual way of keeping prisoners incarcerated within the Abbey, for debts there contracted.

And it appearing, upon advising the proof, that the prison of the Abbey had, till lately, been no other than the jailor's house; that of late, when one Brown was jailor, he had, for the conveniency of his house, built a little hut, with a fire place, and room for a bed, within his close, wherein he kept the prisoners; that when Cairnie succeeded him as jailor, Brown agreed to keep the prison as formerly; and that Beveridge had been sometimes allowed to come from the hut into Brown's house:

THE LORDS "found the jailor not liable;" for, by the prisoner's being permitted to be in the jailor's house, or close, he was not out of prison more than in a common jail he is out of prison when allowed to go into another room.

*Fol. Dic. v. 4. p. 260. Kilkerran, No 1. p. 502.*

1751. December 3.

MR ANDREW DICKSON, *against* The REPRESENTATIVES of MITCHEL of ALDERSTON.

No 6.

A debtor, who had retired to the Abbey, found to have incurred bankruptcy, although not booked.

JAMES SOMERVELL held his estate of Castle-Somervell of John Mitchel of Alderston; and, being also his debtor, disposed the same to him 4th May 1720, as for a price paid: To which disposition it was objected, in the ranking of his creditors, that he was at the time bankrupt, in terms of the statute 1696.

It was proved, Mr Somervell left his country-house about Mid-summer that year, before resignation upon the disposition; and took lodgings in the Abbey: That he used to leave the Abbey late on Saturday night, at which time he avoided being seen, and returned on Sunday night: That he lived there a considerable time; but was not marked in the clerk's book of those who had taken sanctuary.

The bailie-depute of the Abbey deponed he had heard the former clerk used sometimes not to mark in his book, people who had taken sanctuary, that he might sink the fees paid to him on that score, for which he was accountable to the bailie.

THE LORDS were generally of opinion, it was not necessary to bring a man under the qualifications of the act, that he should be marked in the clerk's book.

No 6.

They found it proven, that James Somervell was notour bankrupt. (See BANKRUPT.)

Reporter, Lord Murkle

Act. H. Homr.

Alt. Lockhart.

Clerk, Justice.

Fol. Dic. v. 4. p. 260. D. Falconer, vol. 2. p. 292.

1779. January 13.

JOHN GRANT, against ROBERT DONALDSON.

JOHN GRANT, writer in Edinburgh, retired to the Abbey of Holyroodhouse, on 21st April 1778, for protection from personal diligence, raised against him at the instance of Robert Donaldson, writer to the signet. Having neglected to enter his name in the Abbey-books, he was apprehended within the sanctuary 7th May thereafter, on Mr Donaldson's caption, and carried instantly to jail, but liberated that day, upon making consignation of the money for which the charge had been given. Mr Grant, after his liberation, presented a complaint to the Court of Session, against Mr Donaldson, and the messenger who executed the caption, praying the Court to find, that their proceedings were illegal and oppressive; to inflict censure on them; and to give the complainer a suitable reparation for the injury.

*Pleaded in defence:* At the time this caption was executed, the complainer was not entitled to be protected against diligence, though within the precincts of the sanctuary, as he had not entered his name in the Abbey-books.—The place itself is, by the custom of the Abbey, a protection for 24 hours to the person retiring within its precincts, that he may have sufficient time to get himself booked; but, in order to continue any longer under the protection of the sanctuary, booking is as necessary as being locally within the bounds of it.

This is established by immemorial usage; and it likewise appears from the regulations of the place. The acts of the bailie-court of the Abbey, in 1686 and 1697, discharge the inhabitants from receiving any person into their houses, until they cause an entry of their names and designations to be made in a book kept by the bailie, under pain of being subjected to certain fines. In 1733, there was an act of the bailie-court, declaring, that the not booking should be a forfeiture of the privilege. This act, with other records of the court for that year, is now lost. But, in the case of Hamilton of Redhouse, 1741, *No 4. B. 1.* it was founded on by both parties as a regulation then subsisting.

The constant usage has been, that all persons retiring to the Abbey for protection, have entered themselves in the books. Seven hundred and sixteen persons have been booked since 1741. In the above case of Hamilton of Redhouse, 12th June 1741, the court expressly found, that booking was a necessary requisite to the privilege of the sanctuary.

*Answered for the complainer:* The privilege of sanctuary within the bounds of

No 7.

It is necessary for a messenger, executing a caption within the precincts of the Abbey, to have the concurrence of the bailie.

In order to have the benefit of the sanctuary, beyond 24 hours, the party's name must be entered in the Abbey-books.