

1787. February 10.

ALEXANDER PARK and GEORGE BROWN, *against* JOHN BENNET.

ALEXANDER PARK and George Brown, two of the creditors of John Bennet, who had retired to the Abbey, made oath before the bailie, That they believed he had gone thither to have an opportunity of leaving the kingdom, and thus disappointing the demands of his creditors.

John Bennet was examined by the bailie; and on his refusing to give security for his remaining in Scotland, he was committed to the jail of the Abbey. Afterwards, in consequence of an application to the Lord Ordinary on the bills, in which it was stated, that the creditors intended to bring Bennet to trial as a fraudulent bankrupt, and that the Abbey jail was insufficient for the purpose of securing his person, a warrant was obtained for removing him to the prison of Canon-gate.

Observed on the Bench: The privilege of the sanctuary would be greatly perverted, if it could be used as a means of a bankrupt's escaping from Scotland, and thus evading altogether the demands of his creditors. The bailie of the Abbey, therefore, with regard to those who take refuge within his jurisdiction, must be warranted, in the same manner as the other ordinary judges, to use the necessary precautions for preventing wrongs of this sort.

After advising a reclaiming petition for John Bennet, with answers for the creditors, which were followed with replies and duplies, the Lords affirmed the interlocutor that had been pronounced by the Lord Ordinary. (See MEDITATIO FUGÆ.)

Lord Ordinary, *Henderland.* For Bennet, *A. Fergusson.* Alt. *Jo. Clerk.* Clerk, *Colquhoun.*
Craigie. *Fac. Col. No 311. p. 480.*

1799. July 11.

JAMES DUNLOP of Garnkirk, *against* the ROYAL BANK of SCOTLAND and JAMES CHRISTIE, Esq.

JAMES DUNLOP, whose estate had been sequestrated in 1793, having retired to the sanctuary of Holyroodhouse in 1798, was incarcerated in February 1799, in the Abbey jail, upon an act of warding of the bailie of the Abbey, obtained for recovery of a debt contracted during his residence there. He brought a process of *cessio bonorum*.

The Royal Bank and Mr Christie, objected, That incarceration in the Abbey jail, was not such imprisonment as was required by law, particularly by the act of federunt 1688, in which it is enacted, 'That in time coming, when any bankrupt shall raise a process of *cessio bonorum* against his creditors, that with the process he produce a certificate under the hand of one of the magistrates of the

No 8.

A warrant for incarcerating on account of *meditatio fugæ*, may be obtained against one who has retired to the sanctuary.

No 9.

Incarceration in the Abbey jail found not to be such imprisonment as to entitle the party to commence a process of *cessio bonorum*.