LORD ELCHIES'S NOTES.

ABBEY.

No. 1. 1736, June 25. MUNRO *against* M'MILLAN and GILLIES.

AFTER hearing counsel, the Lords, in respect the diligence to be executed did not issue out of this Court, found the petition not competent, and therefore dismissed it. Such as spoke seemed to think the Abbey was as much a sanctuary against the Crown's debts as the subject's, the diligence in both cases being by the King's authority, and in his name. *2dly*, Even as to debts contracted in the Abbey, though the Bailie might imprison, or perhaps put the debtor out of the sanctuary, yet letters of caption could not be there executed, nor was this Court the proper Court, or officer, for dispensing with the privilege;—but in the end of the debate, it being mentioned that the diligence in question was no caption, but a Justice of Peace warrant, these points were not determined, but the above interlocutor given.—*Vide* a declaration of the Privy Council, 14th March 1678, directly against the first point. It is quoted by Fountainhall.

No. 2. 1741, (June) July 12. HAMILTON of Reidhouse.

THERE were two questions, 1*st*, Whether the Bailie giving his concourse to executing a caption against Hamilton in the Abbey, since he was not booked in terms of the act of the said Bailie Court 1697, was lawful: The Lords found it was.—*Pro* were, Strichen, Kilkerran, Dun, Balmerino, Munzie, Murkle, Leven, the President, *et Ego*.—*Con.* were, Royston, Justice-Clerk, Minto, and Haining; and Drummore did not vote. Second question, Whether upon information without oath of Hamilton's having sums of money, as set forth in the prints, and that he was *in meditatione fugæ*, it was lawful to the Bailie to give the warrant to search his pockets? In this question, Lord Isla, inveighed greatly against the practice of taking informations on oath, and introducing that into our law, contrary to our statute; though he approved of the practice of bringing the prisoner before the Judge to be examined; so that the question turned chiefly on this, Whether L.36 sterling was a sum sufficient to justify the warrant? and *2dly*, Whether searching the pockets was lawful, and particularly whether money in a man's pocket, or a ring on his finger, might be poinded?—Upon the whole, it carried by the President's casting vote.—*Pro* were, Kilkerran, Dun, Balmerino, Munzie, Murkle, Leven, *et Ego*,—*Con.* were, Royston, Justice-Clerk, Minto, Haining, Strichen, Isla, Drummore Reporter.