

character of bankrupt, without interruption or discontinuance down to the process; the words of the statute holding and reputed the defender to be a notour bankrupt, 'from the time of his foresaid imprisonment, retiring, flying, &c.' plainly import a commencement of the present bankruptcy, which, from the very idea of commencing or beginning, must infer a continuance in the same state: and the same is implied in the subsequent words, 'declaring all and whatsoever voluntary dispositions, &c. made by the foresaid dyvor or bankrupt, either at his becoming bankrupt, or for 60 days before, in favours of creditors, to be void and null.'

And this construction arising both from the nature of the thing, and the words of the statute, was found by the Court to be the just construction, upon a hearing in presence, in the case of Agnes Hamilton, Lady Rachan, No 173. p. 1092. The Judges, before the hearing, settled the point in dispute, 'Whether a person being once notour bankrupt, in terms of the act 1696, still continues a notour bankrupt by the construction of the act, though the debt in the caption on which he was imprisoned be paid, the caption discharged, and he set at liberty? or whether it be necessary that he continue under diligence, as well as continue insolvent?' The result of the hearing was to find, 'That the debt and caption being discharged before the transaction challenged, it fell not under the act 1696.'

And indeed to judge otherwise, would be in effect to maintain, that, if a man have once the misfortune of being a notour bankrupt, no circumstances can ever relieve him from this character; a conclusion contrary both to common sense and to the statute. A trading man becomes bankrupt in the sense of the statute; but, by the assistance of friends, he compounds with his creditors at 10 or 15 shillings per pound, and, upon payment of the composition, obtains a full discharge from every one of them. Being thus a free man, he begins trade again, and perhaps makes some money, but at the distance of 10, 20, or 30 years, becomes bankrupt a second time. Now, if it would be sufficient to specify that this man was once bankrupt, without necessity of specifying the continuance of the bankruptcy down to the date of the process, the consequence would be, that every single voluntary deed, granted from the date of the former bankruptcy, in security or payment to a creditor, must be declared void and null, not only at the instance of prior creditors, but also of creditors whose debts were not existing at the date of the transaction.

The Judges adhered. They considered, that as the common debtor was rendered bankrupt by incarceration in terms of the statute, the few months in which he was allowed his liberty, was no such interruption as to make the posterior surrender of his effects be considered as a second bankruptcy.

Fol. Dic. v. 3. p. 54. Rem. Dec. v. 2. No 118. p. 241.

1751. December 3. DICKSON against REPRESENTATIVES of MITCHELL.

To constitute a debtor bankrupt, from his betaking himself to the sanctuary, it is not necessary that the clerk of the Abbey should mark him in the books.

Fol. Dic. v. 3. p. 53.

* * * See the particulars, No 6. p. 5. *voce* ABBEY of HOLYROODHOUSE.

No 176.

Found, that if the debt in the caption upon which a debtor has been imprisoned, be paid, the caption discharged, and he set at liberty; subsequent transactions cannot be affected by that diligence.

No 177.