

debtors to satisfy their just and lawful debts.—THE LORDS allowed trial to be taken of the time of his being apprehended, and the manner how he was detained, or if he offered to go back to the Abbey, and was enticed to stay, and hindered to go out; but repelled the second reason founded on the Queen's indemnity, and found it did not extend to take off the effects of captions for civil debt, prior to the date thereof.—For executing captions on the Sunday, see Durie 4th July 1628, Rachlet *contra* Lauder. (See LEGAL DILIGENCE.)

*Fol. Dic. v. 2. p. 361. Fountainhall, vol. 2. p. 518.*

No 3.

1741. June 12.

HAMILTON of Redhouse *against* JAMES HALIBURTON, Bailie-Depute of the Abbey of Holyroodhouse, &c.

REDHOUSE having retired to the Abbey, information was exhibited to the bailie by some of his creditors, setting forth, That he had money in his pockets, but that he refused to pay any of his debts with it; and that he had said he was resolved to fly out of Scotland with it; therefore craving warrant to apprehend and search Redhouse, and to take what money should be found in his pockets from him: The bailie accordingly, without requiring an oath of the informers, or granting a warrant to bring Redhouse before him for examination, granted the desire of the creditors petition *against* Redhouse, who had not been booked in the bailie's books; and which warrant having been accordingly executed, and L. 5 Sterling taken from him, he, to redress these grievances, brought a process *against* the bailie, &c. for damages.

THE LORDS found, That, in consideration of the act of the Abbey-court in the year 1697, and practice agreeable thereto, of putting captions in execution *against* persons not booked, it was lawful for the bailie of the Abbey to grant his concurrence complained of, for putting the caption in execution. And found, That, in consideration of the signed information exhibited to the defender Haliburton, by the other defenders, it was lawful for Haliburton to grant the warrant complained of to seize and search the pursuer.

*Fol. Dic. v. 4. p. 260. G. Home, p. 287.*

No 4.  
The bailie of the Abbey found entitled to grant warrant to search for money about a debtor, who had taken refuge there, but had not been entered in the books.

1749. July 26.

HUSBAND *against* CAIRNIE.

IN an action at the instance of Paul Husband merchant in Edinburgh, *against* Alexander Cairnie, late prison-keeper in the Abbey of Holyroodhouse, for payment of a debt of L. 8:7s. Sterling, due to him by George Beveridge, and which Beveridge had contracted while in sanctuary in the Abbey; on the ground, that Carnie, while jailor of the Abbey prison, had allowed Beveridge, imprisoned at the instance of another creditor, to go out of prison, although arrested by

No 5.  
The keeper of the Abbey prison liable, if a debtor escape through his fault.  
The manner of the imprisonment in the Abbey prison.

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.