

THE  
DECISIONS  
OF THE  
COURT OF SESSION.

---

ABBNEY OF HOLYROODHOUSE.

1668. January 7.

THE Lords, upon debate amongst themselves, thought that the Abbey, being his Majesty's house, should not exempt or protect any person against his Majesty's laws, and the execution of letters of caption, and therefore recommended, to the keeper of the Abbey, to put the debtor out and not to shelter him there.

*Fal. Dic. v. 2. p. 361. Dirleton, p. 52.*

---

1708. June 12. COCKBURN, *Supplicant.*

RICHARD COCKBURN elder of Clarkington, having retired to the Abbey, to save him from captions at his creditors instance, he there contracts about L. 35 Scots, in a change-house, for meat and drink furnished to him; and he being pursued before the bailie of the Abbey, a decret is taken against him, holding him as confessed, and thereupon he is incarcerated in a prison they have for delinquents, or such debtors.—He gives in a bill of suspension, craving to be set at liberty on these two reasons: *1mo*, The decret was *a non suo iudice*, they having no jurisdiction for cognoscing on debts. *2do*, He craves to be reponed to his oath, there being no other mean of probation against him.—*Answered* to the *first*, They were most competent to debts contracted within the precinct of the

VOL. I.

A

No 1.

It was the opinion of the Court, that the Abbey should afford no protection against diligence.

No 2.

The jurisdiction of the bailie of the Abbey.

The right to have a prison there.

No 2. Abbey, especially for vivers. To the *second*, He was personally apprehended, and so could not pretend ignorance, and does not condescend on any thing to purge his contumacy at all; and the only thing he seemed to controvert was, the exorbitant articles of the account.—THE LORDS repelled his reasons of suspension, and refused his bill.—Some doubted of their having a prison, and thought he should have been transported to the Canongate, or Edinburgh tolbooth; but then his other creditors might have arrested him, which they cannot so well do in the Abbey, which is a sanctuary; *sed quo jure*, see it debated *alibi*; if it be as the King's palace, and of old a religious convent as well as a prison.

*Fol. Dic. v. 2. p. 361. Fountainball, vol. 2. p. 442.*

1709. July 21.

HALIBURTON *against* STEWART.

No 3.

A proof allowed whether a debtor had been fraudulently detained out of the Abbey after 12 o'clock on Sunday night, when a caption was executed against him.

Effect of an act of indemnity.

PATRICK HALIBURTON having contracted debts near to L. 3000 Sterling, and having secretly conveyed away his effects, he retired to the Abbey; but Sunday being a day whereon they are secure against all captions or other diligences, he came up to the house of Mr Stewart, one of his creditors, and having supped with him, and thereafter staid till it was past 12 o'clock at night, he is seized upon by a messenger, by virtue of a caption, and put in prison: whereupon he gives in a complaint to the Lords, that having come to Edinburgh, on a Sunday, to treat with Mr Stewart anent his satisfaction and security, and his own liberation, he did trepan and ensnare him by pretending much kindness, and inviting him to supper, and then protracting the time, in overtures and terms of accommodation, till the town clock struck 12 at night; and then he had a messenger prepared to take him to prison, by a most illegal and treacherous practice; all the preparatory steps being done on the Lord's day; which is all one as if he had executed his caption on the Sunday, contrary to our law and decisions, and the prohibition of the Roman Emperors, *l. 11. C. de feriis*, to secure that holy day from profanation. *2do*, The Queen, by her indemnity, has pardoned all offences, contempts, forfeitures, and outlawries, preceding the 19th of April last, which is the date of her indemnity, which will extend to denunciations and captions, prior to that date; and *ita est* this caption was raised long before, and escheat being a casualty falling to the Queen, by the debtor's contumacy and delinquency, she may either gift it or discharge it, as she pleases; and having done it, he could not be warrantably incarcerate by any denunciation or contempt, prior to the said act.—*Answered*, He staying till the Monday morning, there was neither law nor reason to stop their legal diligence; and, for the Queen's pardon, it only indemnifies criminal contempts and outlawries: and if it were stretched to civil rebellion for debts, it would introduce a strange confusion, and be like the Roman *novæ tabulæ*, or the Jewish year of jubilee, which discharged all former debts; and let indemnities for a hundred years back be consulted, it was never pretended that any of them discharged captions or legal diligences, to compel