

1776. *July 26.* MURRAY SUTHERLAND of CLYNE.

MURRAY Sutherland of Clyne, being apprehended by caption, but not incarcerated, presented to the Ordinary on the Bills a bill of suspension and liberation, on which the Lord Ordinary gave a sist, and appointed it to be intimated. But, as the messenger insisted to proceed, and to incarcerate, Murray Sutherland applied, by petition, to the Ordinary on the Bills to have the incarceration prohibited. The Ordinary reported the case at the foot of the table. The Lords being clear that, according to the course of late decisions, a sist upon a bill of suspension obtained after apprehension of the person of the debtor, is no bar to incarceration, they advised the Ordinary to refuse the petition, and to allow the law to take its course.

1775. *December 17.* M'KENZIE BROWN *against* HIS CREDITORS.

A DEBTOR, liberated from prison on the Act of Grace, may be again imprisoned for the same debt; so the Lords found, 11 *New Coll.*, *Abercrombie against Brodie*. The point again occurred, 17th *November* 1769, *Pollock against Falton*, when the Lords pronounced a similar interlocutor. This interlocutor was reclaimed against, and afterwards the matter was made up, so did not receive a final decision. But though this point in the general should be held to be fixed, yet it seems highly expedient to qualify it; as in the case of *Low against White*, 10th *December* 1709, collected by Forbes, where the Lords found, That the second incarceration, by virtue of the same caption, could not be *sine causa cognita*, and by warrant of the Lords.—Perhaps this was going too far; at the same time some notification, either by a new charge or some other method, seems highly reasonable, otherwise a door might be opened for oppression. So it was argued, 17th *December* 1775, *M'Kenzie Brown against His Creditors*; and yet the Lords were of opinion, that no such new charge or notification was in law necessary; and that a debtor, liberated on the Act of Grace, might be again imprisoned for the same debt, and on the same caption, without any new charge or notification. If the creditor was oppressive, it was said he might be punished for it. The Lords refused a reclaiming bill without answers.

1776. *December 19.* M'RORIE *against* HUNTER and COMPANY.

M'RORIE, merchant in Maybole, being incarcerated by Hunter and Company at Ayr, presented a bill of suspension and liberation. His reasons of suspension were two:—1^{mo}, That his effects had been sequestrated in terms of the late statute, and that he had, in consequence thereof, disposed his whole effects to the factor for his creditors; 2^{do}, Had he even funds to pay this debt, it would not avail the creditor, as the factor would oblige the credi-

tor to repeat the payment. Lord Ankerville and Lord Covington, 6th November 1776, refused the bill, and this day, 21st November 1776, the Lords refused a reclaiming bill and adhered.

5th December 1776, refused a second bill.

The Lords had past two such bills formerly; one in the case of Cuthbert Gordon, merchant in Leith, and another at the instance of John Aird.

And this day, upon presenting a third petition, with a minute of his creditors, that his liberation was highly expedient for ingathering his effects, and there being no opposition, the Lords remitted to the Ordinary on the Bills to pass the bill.

1764. *July 21.*

JAMES PURVES, writer to the signet, having been apprehended on a caption by James Lindsay messenger, who carried him to a coffee-house; Purves gave him his honour, as Lindsay alleged, to return in an hour; but, in place thereof, he retired to the Sanctuary. Lindsay complained to the Court, and insisted that Purves should be examined in presence,—and, if the facts were as he alleged, that he should be delivered up to him, as having by fraud eluded legal diligence, for which the Sanctuary could afford no protection.

The Lords, after examining Mr Purves, replaced him in the jail, and ordered memorials. The point was not determined.

PROBATION.

1776. *August 10.* JOHN WILSON *against* ARCHIBALD M'LEAN.

IN prosecutions where forgery is alleged, proof *ex comparatione literarum* is frequently offered, and is, of all others, the most delicate. In the times before the Revolution, in several political trials, it was highly complained of: it is reprobated in the practice of England: in France, though it is allowed, yet the decision thereof is left to certain stated officers of Court skilled in comparisons of that kind. In short, it is of a very delicate nature.—So argued in the cause, John Wilson, ironmonger in Glasgow, *against* Archibald M'Lean, merchant in Laggan Ulva, in the Island of Mull. Debated in presence 25th July 1776.

This was one of the most extraordinary causes pleaded in my time, on account of the contrariety of evidence. The Lords seemed inclined to wish for further evidence; so said the parties also. After a hearing in presence for six days, 26th July 1776, the Lords pronounced the following interlocutor:—"The