

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-