

other witnesses above exception, that Fullerton was incarcerated upon the two debts in question, and also by the decret against M'Calla at the instance of Kennedy. It was *replied*, That the decret against M'Calla was *inter alios actum*, and witnesses could not be received to prove any executions, but only the execution itself, for which there is a special act of Parliament 1579, cap. 94.

THE LORDS refused to sustain the incarceration upon the bonds in question by witnesses, but either by the executions of the caption, bearing, That the party in prison was put in prison by virtue of the caption, or was arrested in prison, or at least that he was booked in the jailor's book in the tolbooth for the said bonds.

*Stair, v. 2. p. 716.*

1687. July. COUNCIL OF ABERDEEN *against* THOMSON.

THE LORDS sustained a decret, fining one in L. 50 for opprobrious expressions, upon an extrajudicial acknowledgment to a Bailie, without any other probation, though the suspender denied the same, in respect of the custom of the burgh of Aberdeen: But ordained the Magistrates to rectify that custom in time coming.

*Harcarse, (PROBATION.) No 801. p. 225.*

1708. February 28. The CREDITORS of COLQUHOUN of Kenmuir competing.

IN the ranking, Wardrobe of Dalmarnock, Lockhart of Cleghorn, and Winram of Wiston, objecting against one another's rights, it was *alleged* for Wiston, I must be preferred, because, though our sasines were all registered in one day, yet I offer to prove, mine was offered to the register two hours before theirs were presented; and so, by the 13th act 1693, it is clearly preferable, which makes the date of the registration to be the standard of the preference; and the 14th act, same Parliament, ordains a minute-book to be kept, expressing the day and hour when the sasine is presented to be registered; and by the 18th act 1696, the booking and registration are made to be the only rule. *Answered*, The fundamental act for registration of sasines is in 1617; and all that it requires is, to express the year, month, and day, so that the least distance of time that can be allowed, in preferring one sasine to another, is the space of a day; and how easy it is for a clerk to mistake in the matter of some hours, and even to prevaricate so far, as to gratify one before another, which was presented after me; so, wherever they are registered in one day, they ought to come in *pari passu*. *Replied, Leges posteriores derogant prioribus*; and so the acts in 1693 enlarge and explain that in 1617; so that by the express letter of the law, the difference of hours is to be considered, as is done in two arrest-

No 532.

No 533.

No 534.

Found in conformity to Wishart against Davidson, No 530. p. 12630.