

No. 25. merly, was not found to have been rendered by that imprisonment a notour bankrupt in the sense of the act 1696, so as to annul that infetment, or other infetments granted within 60 days before, though he was found to have been then insolvent, and to have continued so. (See DICT. No. 230. p. 1190.)

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1751. *January 26.* FORBES *against* BREBNER and Others.

No. 26.  
Payments in  
money not re-  
ducible upon  
the act 1621.

A DEBTOR, a merchant, after he was distressed by diligence, by horning, and caption, paid three or four debts before he was in prison, but one of them, the very morning of the day on which he was incarcerated. The creditor arrested in their hands, and by their oaths the fact came out as above, and the creditor insisted on the second branch of the act 1621, that these were voluntary payments after his diligence, and on the act 1696. The sheriff assoilzied the defenders; and it was brought before me by advocacy; and I affirmed the sheriff's judgment; and the pursuer having reclaimed, the Lords refused the bill without answers; and my reason was, that though the act 1621 mentions voluntary payments after diligence, yet it is after diligence duly to affect the subject, and no diligence duly affects money in the debtor's pocket; and the act 1696 is only against assignments and other deeds giving partial preference, but says nothing of payment of money; and there is no precedent in all our books of repetition of money so paid. (See DICT. No. 131. p. 1042. and No. 199. p. 1128.)

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1751. *January 29.* JOHNSTON *against* HOME of Manderston.

No. 27.  
*Novum debitum.*

IN May 1747, Burnet, a brewer, was incarcerated on a caption for debt, and soon paid the debt, and was liberated. In July 1747, Thomson, a weaver, brother-in-law to Burnet, got credit in a cash-account with the British Linen Factory for L.100; and Home of Manderston, his cautioner; for whose relief Thomson and Burnet gave him an heritable bond on some houses of Burnet's, to which Burnet had only a personal disposition from one Moffat, who was the person last infest.—October 6th, Burnet the brewer was incarcerated by Johnston on a caption for payment of a bill of L.55 sterling, dated in February, and payable at Lammas 1747, and was liberated on the act of grace; and Thomson having also failed, Home of Manderston took infetment on Moffat's procuratory, and paid the debt to

the Factory. Johnston raised reduction of the disposition and infestment on the act 1621, as without any valuable consideration given to Burnet; but the Lords made no difficulty to repel that reason. *2dly*, On the act 1696, first on Burnet's incarceration in May before the heretable bond; secondly, because of the second incarceration in October 1747, for that the disposition must be reckoned of the date of the infestment in April 1748: But they made as little difficulty of repelling the first, because this bond, though granted after incarceration, yet was not in security of a former debt, but was a *novum debitum*; and for the same reason they repelled the second, for they thought that debts newly contracted, were not at all within the sanction of that law, notwithstanding the former contrary decision between the Creditors of Merchiston and Colonel Charteris.\* And *2dly*, As Burnet's own right was only personal, and no sasine was or could be taken on it, but on Moffat's, they thought it was not in the case of the last clause of the act 1696. The President indeed doubted of this last, but he was clear as to the former. *Me referente*. (See DICT. No. 200. p. 1130. and No. 265. p. 1242.)

E752. November 16.

ROBERT CRAWFURD *against* STIRLING and COMPANY, and Others.

No. 28.

A CHAPMAN having stopped payment, indebted to Stirling and Company, Stirling bought shop goods to the amount of the debt, or a trifle more, and discharged the debt, and got a discharge of the goods and paid the balance; and being indebted also to another Company, one of the partners bought in his own name shop goods to the amount of not only the debt due to the Company, but another debt due to a friend of the buyers, who discharged both debts, and got a discharge of the goods. Crawford, another creditor, raised horning and caption, and brought the chapman within the act 1696, anent notour bankrupts, arrested in the hands of these Companies, and pursued forthcoming. A proof was brought of notour bankruptcy, and the defences were, that the sales were lawful, and that it was lawful to the bankrupt to apply the price in payments of debts, agreeable to the decision Forbes *against* Brebner, (No. 26, *supra*.) The Court unanimously repelled the defences, and decerned in the forthcoming.

Ineffectual for a creditor to buy goods of his debtor after bankruptcy, and discharge the debt in payment of them. The price will notwithstanding be arrestable.

\* See DICT. *voce* BANKRUPT, No. 261, p. 1233.