No. 6. 1738, Feb. 21. GORDON *against* BIRNIE.

THIS is a new question, Whether one coming out of prison on the act 1696, commonly called the act of grace, can be imprisoned for debts afterwards contracted? which the Lords unanimously thought they could, and therefore refused the prisoner's bill; and I doubt not he may be imprisoned by any other creditor, even anterior to the taking the benefit of that act, other than those creditors at whose instance he was then imprisoned or arrested.

No. 8. 1744, June 21. M'FADZEAN *against* NAISMITH.

A BOND of presentation being granted for one Merrie under caption, who fell ill before the day of presentation, so that he could not be presented, and died of that illness; when the bond came to be protested, the cautioners said by way of excuse, that he was fallen so ill that he could not be presented, and therefore protested to be free. A proof had been allowed in the Outer-House, and the indisposition clearly proved. Some of the Lords doubted whether sickness, or any other accident, or even death itself was a sufficient defence; others thought it a good excuse, but that the cautioners should have informed the charger where the debtor lay, and to become bound to present him against that day; but others thought that not necessary, because the charger had not asked where he was, nor demanded such new security; but upon the whole, the Lords without a vote sustained the defence or reasons of suspension, and assoilzied the cautioners.

No. 9. 1751, Nov. 9, 19. MALLOCH *against* RELICT AND CHILDREN OF FULTON.

MALLOCH being condemned for murder of Achinbuthie, obtained a pardon, on pleading of which the Court of Justiciary ordered him to be detained in prison till he should find caution for an assythment, to be modified by the Court or the Exchequer; and thereafter the Exchequer modified L.100 sterling; and to get free of it he now raises a process of *cessio bonorum*. The defences were, that he stood committed by sentence of the Court of Justiciary, which we could not alter or discharge. 2dly, That the *cessio* only obtains against civil debts not punishment of crimes. 3dly, Assythment or in particular, being given *in solatium* to the nearest relations, cannot be dispensed with without executing the capital sentence; and both points were well argued by Mr William Miller, both on the civil law and our own;—and we all agreed that the *cessio bonorum* could not operate against the assythment. We thought in general that *cessio* is not effectual against any debts *ex delicto*, otherwise a bankrupt may *impune* commit any crime that is punished by pecuniary pains or reparation of damages; nay he could not be committed on a lawburrows. 2dly, I doubted whether there is here any debt due, and that the assythment was not a debt, but a condition of the efficacy of the remission; and I know no instance of an action for assythment for slaughter till he had found caution, and then the action is founded on that bond, as in Moody's case against Sir James Stuart; and by the 155th act 1592, on the article of remissions when already granted

without assythment, the method prescribed for recovering was not by a civil action, but by trying him for the crime. And on the first point I observed, that the act of grace, which was certainly intended as wide as the *cessio*, yet is expressly limited to civil debts. 19th November Adhered, and refused a bill without answers unanimously. I was in the Outer-House.

No. 10. 1752, Feb. 20. JOHN DRYSDALE, *Supplicant.*

THE petitioner had pursued a *cessio bonorum*, and upon the proof it appeared by his own shewing, that his breaking was owing chiefly to his smuggling, and sundry seizures made of his goods. He produced sundry certificates of his honesty, and prayed to dispense with the dyvours habit, which we are but too apt to do, even contrary to our own act of sederunt 1688, and to the act of Parliament 1696. But as several of us thought the breaking by smuggling could no more be called breaking by misfortune, as the act 1696 expresses it, or by innocent misfortunes, as our act 1688 expresses it, no more than if it were by gaming, and as this smuggling trade is ruinous to the country, we opposed dispensing with the habit; and upon the question it carried by a great majority not to dispense with it. As I think, Lord Dun and Drummore, (who was in the chair) continued against the interlocutor; for some who spoke for dispensing with the habit, in the end voted for the interlocutor.

PRIVILEGE.

No. 1. 1736, Feb. 5. YOUNG, Constable, *against* BRIGADIER MOYL.

THE Lords adhered to the Ordinary's interlocutor, repelling the declinatory defence, that the Officers of State and inhabitants of Calton were not called, but remitted to the Ordinary to hear the petitioner *in causa, me et quibusdam aliis renitentibus*, who thought that this not being a complaint for any particular rout or quartering, but a general declarator of the pursuer's exemption from quartering, the Officers of State ought to be called,—22d July 1785.

The Lords seemed generally of opinion, that the act confining quartering of soldiers to burghs royal or regality, or market towns, included suburbs as well as burghs properly so called, and therefore would include Calton, Potterrow, Portsburgh, &c. But the question was, If Abbeyhill was to be deemed a suburb, at least of Canongate? Some thought that that was in the property of private persons, and not of the burgh, and could not be called suburbs (of this opinion was Dun,) but then none of the above places would have been suburbs till they were purchased of the town of Edinburgh. Others thought it no suburb because of the distance, which the law has not defined, and is arbitrary; and it carried that soldiers could not be quartered in Abbeyhill, *renit.* Royston, Justice-Clerk, *me, et aliis,*—5th February 1736.