Bennet, who was their prisoner for debt, to escape out of the tolbooth; and therefore craving that they should pay the debt;—It was ALLEGED for the Magistrates, that they could not be liable for the debt, because the prisoner being a miserable person, having nothing of his own to maintain himself, he was still kept in prison, except when he was suffered to go to the hospital, where he was allowed his dinner, and another time to see his dying child, who had no body to attend it; and at these times there was a keeper ordained to attend him; so that immediately when the pursuer took instruments of his being at liberty, he was re-incarcerated, and kept in prison until he died there.

It was REPLIED, That the Magistrates had no power to grant any such liberty; and that it was sufficient that the pursuer had taken instruments that he was abroad and out of prison; seeing *squalor carceris* is a punishment for bankrupts, appointed by the law, which cannot be disposed with by inferior magistrates without making of themselves liable for the debt; as was decided by the Lords, March 27, 1623, in a case, Smith against the Magistrates of the Town of Elgin, where the Magistrates were found liable upon that ground of law.

The Lords, notwithstanding, did sustain the defence, and assoilyie the Magistrates; because that the dispensing with the prisoner to go abroad being for most necessary causes, and the prisoner being attended by a keeper, who did return him to prison in as good a condition as he was in, so that the pursuer could allege no prejudice. They found, that such dispensations could be no ground to make the Magistrates liable, where, in effect, the prisoner was still under custody; and that the cause of enlargement was upon the account of humanity and charity: And found, that the two cases did not quadrate in several circumstances.

That same session, within a few days, the like was decided,—The Town of Brechin against the Magistrates of Dundee,—upon this ground, That they had suffered one Dundass, their prisoner, to go to the fields, and cross the water of Tay in a boat: Notwithstanding whereof, this allegeance was found relevant,—That they offered to prove that he never went abroad but for his health, or necessary business, but with a keeper or guard, which was granted for his health by the advice of physicians; and when he crossed the ferry, it was in the Town's own boat, with a guard, and was never suffered to land in Fife's side; but that day, and all other days that he was suffered to go abroad, he was returned to the tolbooth, and was never one night out of prison. Which being the general custom of the Burgh of Edinburgh, and other towns, the Lords found it relevant to liberate the Magistrates from the debt.

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1671. *February* 17. NICOLL CAMPBELL *against* ANDREW HADDON.

IN a suspension, raised at the said Nicol's instance, of a charge on a bond granted by him, for the sum of £1900, upon this reason,—That the suspender being nowise debtor to the charger, for his own debt, but at the desire of Samuel Meikle, a goldsmith, he became cautioner to the charger; and the bond being drawn blank, he being an illiterate man, who could neither read nor write, he only gave orders to the two notaries to subscribe for him, upon express con-

dition and communing that there should no more be filled up in the blank but £800; which he offered to prove by writer and witnesses, and all that were present at the communing.

It was ANSWERED for the charger, That the bond, being his delivered evident, and whereupon he had used execution, could not be taken away [excepting] *scripto vel juramento.*

The Lords, before answer, did ordain the writer and witnesses, notaries and communers, to be examined *ex officio;* in respect that the suspender was an illiterate man, and that the bond was subscribed blank in the sum: But, after the depositions were taken, the only presumption insisted on being that the letters of apprising, raised against Samuel Meikle, were only for the sum of £800, which was the cause of his engaging, that he might take off that distress; in respect that the said Nicoll could not produce the said letters of apprising, because they were retired by the said Nicoll, or Samuel Meikle's agent, and the bill taken off the signet, upon a discharge of the apprising granted by the charger; and that the charger did instruct, that Samuel Meikle was truly debtor to him in the whole sums contained in the bond: Therefore the Lords found the letters orderly proceeded for the whole sum contained in the bond; unless the suspender would take it away by the oath of the charger.

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1671. *February* 19. PATRICK SCOTT of LANGSHAW, and his SON, *against* MR WILLIAM WALLACE, Advocate.

PATRICK Scott of Langshaw, and his Son, pursuing for the valued teind duty of the lands of Blaislie, for several bygone years;—It was ALLEGED for the defender, That he could not be liable; because he had neither intromitted with the teinds, nor set stock and teind for a joint duty; so that the tenants who had intromitted could only have been pursued.

To this it was REPLIED, That the pursuer having right to a decreet of valuation of the teinds, the heritors are always liable for the valued duty, whether they intromit or not.

It was DUPLIED for the defender, That the decreet was null, the heritor of these lands for the time not being called; whereupon, and upon other nullities, he had obtained a decreet of reduction of the said valuation.

It was TRIPLIED, That, as to all years prior to the reduction, the defenders should be liable, the decreet of valuation being a good title, aye and while it was reduced.

The Lords did sustain the defence and duply; and assoilyied from the whole bygone valued duties; seeing the decreet of valuation was reduced, as being null *ab initio;* and that payment had never been made of the valued duties by the defender.

Thereafter it was ALLEGED for the pursuer, That the defender's author had homologated the decreet, by payment of the valued duty several years after the valuation.

To this it was ANSWERED, That albeit payment was made before the reduction of the decreet of valuation, yet the reduction being obtained, the former pay-