

by herself, and proceeded upon a supposition, taken for granted, that the discharge was extorted *metu carceris*, and yet not a syllable of it proven; and the very decret itself wants these words,—that they found it proven,—but allenary bears, The Lords find the allegiance of its being signed in prison relevant, and therefore decern; so the decret is evidently null, as without all manner of probation *quoad* that point: And Providence has overruled the clerks to minute it so, to leave room for oppressed innocence not to be overthrown, and concluded in a decret *in foro*.

ANSWERED for Mrs Short,—That she oppones her decret, wherein all now obruded is either proponed and repelled, or competent and omitted; which are the two great bulwarks and security of the lieges for sopiting pleas, and preventing their eternity. And if this decret be not able to abide the test, they know no sentence can be firm. Though the clerks had by mistake omitted these words, that the Lords found it proven, as well as relevant, yet it is plain, by the whole context, that it was actually and fully proven; and a petition given in by my Lord Saline, alleging, as he does now, that the *metus carceris* was not proven, yet was refused.

REPLIED for my Lord Saline,—That the imprisonment (*esto* it were proven that he was in these circumstances, as truly he was not,) is not relevant to annul a deed; for the most part of transactions are entered into when debtors are under diligence for performing their just obligations. Now, if I have him under caption, and to prevent future imprisonment he give me a further security, this is *justus metus et legalis*, and can have no influence to invalidate the deed, else most of our agreements might be quarrelled; and nothing repones him but when it is taken from one actually in prison, and to be detained there if he did not condescend to what is demanded of him.

The Lords, from a principle of compassion as well as justice, to mitigate this woman's rigorous execution, took hold of the defect of the decret, which did not bear it was proven, and therefore sustained the nullity; but the form did not allow him to come forth till it was read in the minute-book, and a charge to set at liberty: but allowed her yet to prove Alexander Short her husband granted that discharge, to redeem himself out of prison. Saline did likewise instruct, that Alexander Short was debtor to him, by intromission with some moveables, and intrusion into a house of his in Stirling; which circumstances likewise moved the Lords to the foresaid decision.

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1710. *January 25.*

In proving the value of some teinds, a query was moved to the Lords, whether miln-multures paid any teind? And the Lords said not; for they might as well crave parsonage or vicarage teinds of a growing wood.

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