time, or informal, yet the Lords of Session are nowise competent judges, there being none that have authority to cognosce upon them but a Parliament.

The Lords having considered the Act of Parliament, that it was clear and positive that the petitioner's name should be inserted in all their decreets, as to which they were not *in casu dubio*, that needed interpretation, they did ordain that decreet to be so extracted. But, how far the same might import in law, and prejudge the lawful creditors of the Earl of Bramford, or the Lord Forrester, they declared they would not meddle *hoc loco:* but, that, by their ordinance, they intended no more but that the simple name of the petitioner should be inserted, in obedience to the Act of Parliament requiring the same; and that notwithstanding the Act of Parliament was not of the nature of an assignation to a depending process, *quo casu*, if the defender could allege nothing against the assignee's right, the Lords never refuse to grant extracts in his name; whereas, in this case, the Act of Parliament did not rescind the prior act of restitution in favours of the representatives of the Earl of Bramford, or declared that the petitioner had a better right; which was impossible in law; but only ordained his name to be inserted in all decreets, albeit recovered at the instance of other parties; which is against all law and custom.

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1672. *November* 15. ALEXANDER BAILLIE *against* GEORGE MITCHELL.

IN a reduction of a bond of 600 merks, granted by the said Alexander to William Reid, merchant, and assigned by him to George Mitchell, upon the reason, That the bond was granted for an apprentice-fee, as may appear by the bond and indentures being both of one date and written and subscribed by that same writer and witnesses. But so it is, that William Reid was so far from educating his apprentice in the trade of merchandizing, conform to the indenture, that he himself became bankrupt within a few months, and the apprentice forced to leave him; and, therefore, the bond was null, as being *causa data causa non secuta.*

It was REPLIED, That the bond bearing borrowed money, the defender was *in bona fide* to take assignation thereto, for an onerous cause, being a just creditor; so that the reason of reduction could not militate against him, but only against the cedent.

It was DUPLIED, That the indenture and bond being in effect as one deed, and being known to the defender before he obtained the assignation, which was granted after the cedent was known to be bankrupt, the reason ought to militate against the assignee as well as the cedent.

The Lords having debated amongst themselves, if it was sufficient that the assignee did know the cause of the bond to have been for an apprentice-fee, did not give their interlocutor upon that singly, but found, That his knowledge, and the receipt of the assignation, when he knew the cedent to be bankrupt, was relevant against him, as well as the cedent, to be proven by his oath. But as to the first point,—if the naked knowledge of the cause of the bond should put him in that same condition with the cedent? it seems that the point would have been more difficult; for the debtor, granting a bond for borrowed money,

payable at a term, for an apprentice-fee, is for a just cause; and any person, for an onerous cause, (albeit he knew that to be the cause,) might lawfully take an assignation thereto; after which, the superveniency of the cedent's becoming bankrupt, ought not to prejudge the assignee. And, on the other part,—it being known to an assignee, that a bond for borrowed money, for performance of a deed which had *tractum futuri temporis*, it was sufficient to put the assignee *in mala fide* to distress the debtor, when that bond was granted *causa data causa non secuta*. Yet it seems, that, in point of law, the assignee could not be suspended upon that ground; seeing the money might have been uplifted and disposed of by the cedent before the outrunning of the apprenticeship; and, therefore, might have been assigned. But no interlocutor was given thereupon.

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1672. *November* 16. JAMES DAVIE *against* DAVID KENNOWAY.

DAVIE being charged upon his bond, for payment of debt due by James Cassils to Kennoway, in respect he had not imprisoned him in the tolbooth of Linlithgow, upon the 24th of February thereafter, conform to his bond for that effect, did SUSPEND, upon that reason,—That he had fulfilled the condition, by entering the said James Cassils, prisoner in the tolbooth, within two days thereafter.

It was ANSWERED, That the bond being peremptory as to that day, the failure could not be purged by any posterior performance.

The Lords did find, That the performance was sufficient to purge the failure; unless the charger would allege that he was prejudged and damnified, or that Cassils was in a worse condition the day of his imprisonment than he was the precise day contained in the bond; for the adjection of a special day in bonds, can only resolve in damage and interest, where the fact itself is truly done and performed.

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1672. *November* 16. DUNDAS and OTHERS *against* The MAGISTRATES of EDINBURGH.

THE Magistrates of Edinburgh, being pursued for payment of a debt due to Dundas, and some others of the creditors of Whythead of Park, upon that ground,—That Park, being imprisoned in the tolbooth of the Canongate, for civil debt, and arrested at the pursuer's instance; notwithstanding, he was suffered to escape, by the negligence of the jailer or insufficiency of the prison:—

It was ALLEGED, That the way of the escape being by a false key to the bell-house door, and carrying of a rope to the top of the bell-house, whereby the prisoner did come out at a window, the jailer nor magistrates could not be liable for the debt; because it was *casus improvisus*, and such as no prudent person could foresee, there never having escaped that way any prisoner in former times.