In as good Condition as before his getting off 27 March 1623 Smith contra Bailies of Elgine. Stair lib. 1 tit. 17 § 22. But this Allegation, that a troope of Souldiers w[hi]ch kept guard in the Tolbooth having on the Kings birth day called for a prisoner to drink with them he in the Interim escaped, and that the Magistrates upon the first Relief sought him did further both use diligence and cause search for him and within foure houres thereafter put him in prison in the same condition was found Relevant to Infer that the prisoner escaped ease fortuito or improvisio, and to free the Magistrates from payment of the debt 14 Decemb. 1627 Fender contra Magistrats of Jedburgh. Alleadged for the Magistrats it was Pleaded be a Burrie Magistrates of a Burgh, that the prisoner for debt escaped vi Majori by five or seven Armed men Confining at the opening of the prison door to all in the Lady lodging with him, at the ordinary time of Night while there were divers Persons at the Gate 25 January 1635 Blair contra Magistrats of Elgine. Magistrates are Liable to pay the Debts for which persons were in prison out of their prisons were there for fines whether they be both Incarcerated, bro only Arrested for such Debt 9 June 1666 Hay contra the Magistrates of Elgine. Intimation of the Arrestment was made to the Tailor commanding him to detain the prisoner, but the Arrestment was not Intimated to the Magistrates: during which the keeper of the prison, whom they Intrust and are Answerable for sought to have a Record of all Incarcerations, and Arrestments for Debt given, the Magistrats there of 18 June 1630 Inter Eosdem & the Magistrates of a Burgh were decerned to pay the Debt of a Person who escaped out of prison in the time of former Magistrates, without Necessity to Discuss first those who were Magistrates the time of the escape, as being the only persons Lyable Because the Burgh (whose the person was) was principally Liable and Answerable for its Magistrates, and the Creditor was not bound to know who were the guilty Magistrates 31 January 1662 Pagla contra Magistrates of Edinburgh. Charge Executed at the Instance of a Creditor against two Bailies Standing Lock to apprehend the Charges debtor in their Company by vertue of Letters of Caption was Sustained to Make both those Magistrates liable for the Debt for not doeing their duty to take him albeit a Copy was Delivered only to one of those Bailies the



being Conjunct in the office and present together 19 Novemb. 1628 Rae contra Douglas. Every one of the Magistrates of a burgh are not Liable in Solidum for the whole debt upon the account of a Debtors being unwarrantably let out of Prison by one of the Magistrates, but they are all Liable for it as an United body who Must Reckon among themselves and seek Relief from him who hath Committed such a fault to the effect being the Party Injured may be Generall which of them were the fault 30 January 1627 Her contra Bailies of Jedburgh. 24 January 1642 Smith contra Williamson Hopewood Jurat. 6 tit. 18 Magistrates. Magistrates who suffered the Principal debtor to escape out of their prison and were Decerned to pay the Debt, having upon payment got assignation hereto from the Creditor, were Ordained to Recourse for their Relief against the principal debtor & Cautioners from the Cautioners, had they been distressed by the Creditor for payment have pursued the Magistrates who were liable not only but also to all whom having Interest ex Lemma et debito would the Cautioners Certainly had, by being exposed to pay the Debt there principal & Recourse to that Judgment the debt by Magistrates come in place of the principal debtor or Debito cedente in the same Manner for the Cautioners as payment by the principal debtor would Extinct done 24 January 1666 Magistrates of E. Grind contra Taylor.

No Assignation of goods by a person Incarcerated by Virtue of Letters of Caption is sustained to the prejudice of Diligence Instance he was Incarcerated, upon poor prisoners Assignation. Magistrates of a Burgh cannot dismiss a prisoner after Incarceration upon a Suspension of the debt 30 March 1626 Gemmil contra Bailies of Glasgow. Upon Instruction that the Charge was satisfied before, without a Warrand from the Lords of Session Charging them to let at Liberty. But seeing whose persons are Incarcerated for Unanswerable Debts, the Expenses of procuring a Suspension and charge to let at Liberty under his Majesties Signed will Some time Near equal the Debt. Debt which poor prisoners are not able to satisfy, a plurality of the Lords of Session Authorized Magistrates of Burghs to Enlarge even at Liberty persons Imprisoned by Virtue of Letters of Caption for Debts not Exceeding five Hundred Merks without any other warrand