

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 prejudice 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.