and his taking the Key is understood to be only for the more Surety and not to prejudge the Lord: especially seeing there may be other Keys of the Room unknown to the Prisoner. The Lords Sustained the Inhabitors Defence & Absolved him from the pursuit 22 June 1704 Hay Sheriff Clerk of Aberdeen contra William Anderson Innkeeper in Kinghorn.

* Magistrats of Burghs are liable to pay the Debt for which persons escaping out of their prison were there confined, whether

[illegible] Debtor escaped from the Tolbooth of Inverness made his Escape from the Sheriff [illegible] Lawful Caption thereof [illegible] Lords sustained the Pursuit against the Magistrats of the Burgh that the prisoner for Debt escaped by main force & violence armed men assaulting & opening of the prison door to let out his Lady to speak with him at the ordinary time of Supper & the three next days of the Debtor 29 January 1685 [illegible]

* Magistrats were found liable for the Debt of a prisoner escaping out of their prison albeit the prison and stone locked doors without one within whereof the Inmost was an Iron door and the prisoner incarcerate having got secretly conveyed in some Mason or wrights Tools had in the night time broke all the Locks & Escaped. In Respect there was no Chains and cat Bands upon the outer doors of the doors to which the prisoner could not search, tho it was the ancient custom of the Burgh to put cat bands only upon prisoners for Crimes 11 February 1671 Neill contra Town of Kirkaldy. (A)

* Yet in actions to make arrested Goods forthcoming & the principal Debtor must be summoned who alledge the Debt arrested furth paid: yet where Magistrates are pursued for payment of a Debt owing by one they refuse to execute Letters of Caption against it is not necessary to call the Debtor: Because although diligence was got and Letters from Before, and the Magistrates are condemned for their own Fault of Diligence to Authority within the principal Debtor dwelt no. Interest 25 June 1629 Rose contra Bailies of Inverness But yet in a process against Magistrates for payment of a Debt alleged to his purchase at whose instance the Debtor having been incarcerated in their prison had made his Escape: The Lord found no process requisite against the Magistrates unless the Assignation to the pursuer were produced. Albeit it was pled for him that he needed not produce the Assignation to the Defender now who was cautioner only ex facie Debiti but it was answered that this Debtor was apprehended and Incarcerated and had made his Escape for which the Defender might be liable 31 January 1632 Roderick contra Maxwell of Logan. 4th February 1670 is competed against Magistrates Letting one incarcerated out of prison without a just cause as a warrand from the Lords, or Sickness or extreme danger of the prisoners life &c. as in Vol. 1. pag. 809 in fin.

(A) Information of Magistrates of Elgin. Hallyards arrestment was made to the Jaylour commanding him to detain his prisoner, tho the arrestment was not intimated to the magistrates: seeing the Keeper of the prison whom they intrust and are answerable for ought to have a Record of all Incarcerations and Arrestments for ensuring the magistrates thereof 18 June 1670 Inter Dom.

* The magistrats of a Burgh were decerned to pay the Debt of a person who escaped out of prison in the Time of former magistrats without necessity to discuss them those who were magistrats the Time of the Escape, as being the only persons Juridically Bound: Because the Burgh (whose the prison was) was principally liable and answerable for its magistrates; and the Creditor was not bound to know who were the Juridy magistrates, 31 January 1668 Pringle contra Magistrats of Edinburgh. a charge ensued at the Instance of a Creditor against two Bailies standing together to oppressed the charges Debtor in their company by virtue of Letters of Caption was pursued to make both those magistrates Liable for his Debt for not doing their Duty to take him, albeit a copy was delivered only to one of those Bailies, they being conjunct in the office as present together 19 November 1628 Rae contra Douglas.

(B) magistrats were found Liable for the Debt of a prisoner who made his Escape in day light by breaking the Roof of the prison Because the Town officers should Guard the prison in the day time 23 November 1664 Hay contra Magistrats of Elgin. It will not excuse the magistrates from answering for a prisoners Escape that they apprehend and recommit him in as good condition as before it his getting out 27 March 1623 Smith contra Bailies of Elgin. Stair Vol. 4. Fol. 27 822. But this Allegation that a Troop of Souldiers were kept Guard in the Tolbooth during the time of Escape was found relevant to exclude the Magistrates upon the Act of Parliament 1649 Cap. 29 Act 2 Parl. 1 Car. 2 [illegible]

3.

* Vol. Sed vide for George Mathews (Obligd. on act 273 par. 15 J. 6.) 15 mistaken when he says that magistrates of Burghs have not sufficient persons to receive & keep such as are prosecuted to them for debt are liable to pay the debt

* Because the Law ordains sufficient prison houses to be built upholden and maintained by the Provost Bailies counsel & communities of all Burghs out of their common Good act. 273 par. 15 J. 6. It hath been pleaded that only Burghs Royal or those having Provost Bailies and a common Good from the King are obliged to keep prisons for his majesties use whether for Crimes or Debts. But what Bailies of a Burgh of Regality having a tolbooth & prison was per expressum incarcerated on Judicial Law of the Burgh that were Debtor caption for Debt made liable to pay the Debt 7 July 1669 Hamilton qua Cullenden Provost Bailies of a Burgh of Barony are not compelled to execute such charges to take the Kings Rebels: In Respect their Jurisdiction and Authority extends only to execute Decreets and Acts of their own courts 13 March 1623 Bailies of Duns contra Meadows creditors. 12 February 1629 L. Lawloun qua Bailies of Duns. 21 March 1627 E. Castels contra Hilton a Shouts pursued for the Debt of a prisoner who made his Escape from the Sheriff ane entering to apprehend him, was absolved in Respect the Escape di major having wounded the Shout that were taking him 2 December 1664 Wilson qua Thane of Linlithgow.

* Magistrate were not found liable for the Debt of a prisoner declared to have run of Messengers upon the accord that they kept him in a suitable House for 3 days without putting him in the publick prison: seeing there was a continued Seal between the 3 days for said Caption all that time and they were not urged to commit him to prison, and the 3 days 18 June 1670 Shaw contra Magistrates of Kirkaldy. In a Reduction Action against Magistrats of a Burgh the pursuer for probing his Libel, that he having apprehended the Debtor &c as in Vol. 1 pag. 809 till y^e End of the §

* N. 2. Nor is the setter of a House within Burgh bound to make the same sure and debtor the Keys to the Tenant precisely at the Term of Entry, under Pain the custom of the place not to Remove, yet exemplariter at the Term 7 January 1670 Ker contra Dennis.

* N. 3. It is customary in Edinburgh to give over a House for Candlemas for a year 40 days before the Term which the ordinary Time of Setting to others is five, But where a House was set only 14 days before the Term, he who took it was found not to be at Liberty to resile or give it over with in 48 Hours after the setting. No it was sustained relevant to free him from payment of the Rent that the setter did set it again to another, which imported acceptance of the Overgiving 7 January 1670 Ker contra Dennis.