whereas now he will instruct, that the total of his collection extended but to £.22,000, and that he had paid in the whole before his granting of this bond; and so being *per vim et metum*, he ought yet to be reponed to a fair count and reckoning; and that the Lords have so decided, 3d July, 1668, Row *contra* Houston, No. 12. p. 16484.; and 18th February, 1680, Burnet *contra* Ewing, No. 18. p. 16494.; where parties were reponed against bonds granted by parties under caption, to evade imprisonment, unless by transaction somewhat be given down. Answered, This is a reason of suspension not verified; neither can a count and reckoning impede execution on a clear liquid bond; and the force was not unjust, but *metus legalis*, which cannot restore him. And the decisions do not meet this case; the first being in a transaction *litis dubiæ*, where there must be *aliquid datum et retentum;* and the second was in the case of one arrested at London, which are obtained there, upon any pretence. The Lords refused to take in a count and reckoning here; but found the letters orderly proceeded; and remembered some days ago they had so determined in a stronger case, between Andrew Ker, merchant, and Edgar of Newton, who being pursued on the passive titles for a debt contained in his father's bond, and a decree in absence obtained against him, and taken with a caption, he granted bond of corroboration of the debt; but afterwards raised a reduction and suspension, on this reason, that the decrees corroborated being null, his homologation thereof could never make them subsist, and that he nowise represented his father, and yet he was held as confessed thereon by a decree stolen forth against him in absence, and he granted the bond of corroboration *ob metum carceris;* and so, upon the grounds of the forementioned practicks, was null; yet the Lords sustained the bond, repelled his reason, and refused to repone him against the bond he had granted, though in the messenger's hands at the time, seeing many securities are the product of legal diligence, and ought not on that head singly to be quarrelled or reversed.—(See the case alluded to, below.)

Fountainhall, v. 2. p. 23.

No. 22.

1698. *December* 9. ANDREW KER *against* RICHARD EDGAR.

No. 23.
A bond corroborating a decree sustained as an act of homologation, tho' it was granted on horning and caption *metu carceris*.

Andrew Ker, as having right to a decree at the instance of his father, and another, for the same sum, at the instance of his mother, both against Richard Edgar, did apprehend the said Richard with caption, who granted a bond of corroboration, to prevent his imprisonment.

The said Richard being charged upon the bond of corroboration, he suspends, upon these reasons: 1*mo*, The bond of corroboration was extorted *metu carceris*, without any transaction or abatement of the sums contained in the decree for which the same was granted; 2*do*, The decree, which was the ground of corroboration, was in absence, and against a minor undefended.

No. 23. It was answered: 1*mo*, As to the decree, the charger will not enter into a debate anent the grounds thereof; seeing the same is confirmed and homologated by the bond charged upon; 2*do*, As to the pretended extortion *metu carceris*, it is not relevant; because no legal execution can be reckoned *justus metus*, all acts of extortion being violent and illegal; and the suspender having neglected the legal remedy of suspension, either before or after he was taken with caption, and having rather chosen to homologate the decree and diligence, by a bond of corroboration, he cannot now quarrel the decree homologated.

It was replied: *Metus carceris* was always reckoned *metus justus, qui cadere poterit in constantem virum.* And there is no example where the advantage of a legal diligence upon a decree null or reducible was sustained. On the contrary, 3d July, 1668, Thomas Row against Houston, No. 12. p. 16484. it was found, That the obtainer of a decree in absence having discharged the decree, and got a bond for the value, without abatement, the granter of the bond did not thereby homologate the decree or debt, but that he might quarrel the same; which quadrates with the present case, which is yet stronger than it; because there the decree was discharged, and the bond a new original security; whereas here the decree is only corroborated, and is the original debt charged for. And, upon the 18th of February, 1680, Burnet against Ewing, No. 18. p. 16494. Burnet being arrested and imprisoned in London, for not finding bail, according to the laws of the place, a bond granted during his imprisonment was reduced.

It was duplied: The last case doth not quadrate, for Burnet being a stranger in England, in no condition to find bail, or prevent his attachment, there was good reason to reduce the bond, unless it could be supported by a just debt. And as to the other case, it is a single decision; and the charger alleges, that the ground of law insisted on doth support his bond, that the same was freely granted, when the suspender had a legal remedy of suspension, whereby he might either have prevented the diligence of caption, or might have obtained his liberty after he was taken; and since he did rather choose to acknowledge and homologate the debt, than to use that legal remedy, he cannot now be admitted to make another choice, especially considering, that he doth not now offer any objection against the justice of the debt due to the charger, but only pretends he doth not represent his father, the debtor; the two decrees were obtained against him on the passive titles. In which also this case differs from that determined 3d of July, 1668; for there, there was no just debt, but only a decree in absence, upon the promise of payment of a sum, which was not truly due to the charger.

"The Lords found the letters orderly proceeded; and found, That *metus carceris*, by a legal execution, which could have been prevented, or liberty obtained by suspension, was no *justus metus*."

Dalrymple, No. 5. p. 7.