

BRAXFIELD. When a father lends out money in this way, with power to uplift, and without obligation to re-employ, the fee in the son is merely nominal. All his purpose here was to save expense of making up titles, but his deed has transgressed his purpose.

PRESIDENT. I wish to find law for the heir, but I cannot. This is an exceeding hard case: the heir gets less than the younger child. But the subject was *in bonis* of the father, and, had he forfeited, it would have gone to the Crown.

On the 7th December 1780, "The Lords found that the L.600 makes part of the divisible fund, in accounting for the pursuer's *legitim*;" altering Lord Elliock's interlocutor.

*Act.* W. Wallace. *Alt.* A. Wight.

1780. December 7. ANDREW GRAY *against* MAGISTRATES of DUMFRIES.

PRISONER.

Liability of Magistrates for not receiving and incarcerating a Debtor duly presented by a Messenger.

[*Fac. Coll. VIII. 12; Dict. 11,754.*]

COVINGTON. I neither like this supposed *local* law, nor the affected pretences for refusing to incarcerate this man.

PRESIDENT. The moment that the debtor was set at liberty there was a *culpa* on the one side and a *jus quæsitum* on the other: the creditor had no farther business to inquire after the debtor.

HAILES. It is said that, although the debtor had been imprisoned, no payment could have been obtained from him, and therefore that the creditor can qualify no damage incurred through the neglect of the magistrates. This is dangerous doctrine. At that rate, whenever any officer of the law fails in apprehending a debtor, there must be a ranking of creditors, for ascertaining whether the creditor suffered damage by the neglect.

On the 7th December 1780, "The Lords found the magistrates liable;" adhering to Lord Braxfield's interlocutor.

*Act.* John M'Laurin. *Alt.* A. Crosbie.