

The COURT altered that judgment, and assolizied the defender.

No 79.

Lord Ordinary, *Hajles.* Act. *Corbet.* Alt. *Maconochie.* Clerk, *Menzies.*  
S. *Fol. Dic. v. 4. p. 136. Fac. Col. No 249 p. 382.*

1786. *June 29.* PURDIE and COMPANY against MAGISTRATES of MONTROSE.

No 80.

Magistrates of a burgh found liable for the escape of a prisoner.

HAY, a debtor of Purdie and Company, having been incarcerated, at their instance, in the prison of Montrose, made his escape from thence in the day-time, by picking the lock of the door of the apartment in which he was lodged,

The Creditors brought an action against the Magistrates for payment of the debt, in terms of the act of sederunt of 11th February 1671.

THE LORD ORDINARY pronounced this interlocutor: 'In respect it is not denied, that upon Sunday, 27th June 1784, when Hay made his escape, the prison of Montrose was kept and secured in the usual way in which it had been kept and secured for many years past, and that the said escape was made by picking a padlock upon an iron lattice-door of the said prison, as to which padlock, no former apparent insufficiency is alleged, assolizies the defenders.'

But the COURT altered that judgment, and found the Magistrates liable for the debt.

Lord Ordinary, *Henderland.* Act. *Baillie.* Alt. *Dean of Faculty & J. Erskine.*  
S. Clerk, *Colquhoun.*  
*Fol. Dic. v. 4. p. 136. Fac. Col. No 285. p. 440.*

1788. *July 8.*

ALEXANDER WILSON against The MAGISTRATES of EDINBURGH.

A DEBTOR of Alexander Wilson having been imprisoned in the jail of Canon-gate, obtained a judgment of the Court of Session, finding him entitled to a *cessia bonorum*. This judgment was pronounced on 11th March, being the last day of the Winter-Session, and immediately after he was set at liberty by the jailor.

An action, founded on these proceedings, was brought by Alexander Wilson, against the Magistrates of Edinburgh, as proprietors of the burgh of Canon-gate, and responsible for the custody of persons confined in the jail belonging to it; when it was

*Pleaded* in defence, The obligation of magistrates with regard to the keeping of persons arrested for debt has been partly established by the common law,

No 81.

Magistrates found liable for the sums due to an incarcerating creditor, even where the debtor had before his release obtained the *cessio bonorum*.