

1803. December 7. MACWHINNIE against KEEPERS of the Prison of AYR.

HUGH MACWHINNIE having become bankrupt, was, on the 14th October 1800, imprisoned in the tolbooth of Ayr at the instance of an English creditor. Having applied for the benefit of the act of grace, the incarcerating creditor found caution for his aliment, which the Magistrates modified to 10d. per day. The creditor objected to the extent of the aliment; and the question having been brought before the Court of Session, the Lord Ordinary restricted it to 8d. per day. The prisoner having reclaimed to the Court against this restriction, and stated, that as the keepers of the prison demanded 4d. per day of prison dues out of the aliment modified, he would, in fact, receive only 4d. for his daily support. THE LORDS (11th March 1801) in respect the Magistrates of Ayr, or their jailor, have no right to withhold any part of the aliment modified to a prisoner, and as the full aliment of 8d. found due by the Lord Ordinary must be paid to him by the creditor incarcerator while he remains in prison, refused the petition."

Macwhinnie having obtained a decree of *cessio bonorum*, and been liberated from prison, an action was brought against him before the Sheriff of Ayr, by Hugh Mason and others, keepers of the jail of Ayr, for the sum of L. 12 : 0 : 9, as the amount of jail fees due to them, at the rate of 4½d. for each day of the debtor's confinement. The Sheriff decerned in terms of the libel, and Macwhinnie presented a bill of suspension, in which he contended, that the Magistrates of every royal burgh were bound to maintain a free jail, and that the maintenance of prison keepers was a necessary part of this obligation, and that there was no necessity for exactions on incarcerated debtors. The chargers pleaded the established custom of the jail of Ayr, and referred to the decision, Thomson against the Keepers of the Tolbooth of Edinburgh, June 18. 1789, No 82. p. 11759., by which such charges were authorised.

The Lord Ordinary reported the cause on the papers in the Bill-Chamber, and it was the decided opinion of the Court, that the Magistrates of every burgh were obliged, at the expense of the burgh, to keep up a free jail, and that neither they nor their jailors were entitled to exact any such dues from the debtors who might be incarcerated, as was here attempted.

The bill was accordingly passed.

Lord Ordinary, *Bannatyne*.
Agent, *A. Liston Ramage, W. S.*

For the Suspender, *Boswell*.
For the Chargers, *Ferguson*. Agent, *R. Young*

Fac. Col. No 126. p. 281.

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No 87.
Magistrates
or keepers of
a county jail
are not ent-
titled to ex-
act dues from
incarcerated
debtors.