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unfit to proceed on her voyage, it was the best course for all parties, without waiting to give notice, as is contended for by the appellants.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby reversed, and that the defenders be assoilzied.

For Appellants, *Wm. Adam, David Williamson, M. Nolan.*

For Respondents, *Thomas Plumer, J. A. Park.*

NOTE.—The reversal in this case upsets the judgment in the Court of Session, given in Adam and Mathie *v.* Murray, Mor. App. Insurance, No. 6 as arising out of the same circumstances and risk; and will not support the doctrine laid down by Professor Bell in his Commentaries, founded on both cases, as decided in the Court of Session, Com. vol. i. p. 620.

THE PROVOST, MAGISTRATES, and TOWN-COUNCIL of Kirkcudbright, . . } *Appellants;*

ARCHIBALD AFFLECK, . . . *Respondent.*

House of Lords, 20th March 1809.

DEBTOR'S ESCAPE FROM PRISON—LIABILITY OF MAGISTRATES.—In this case, the prison was alleged to be strong and sufficient in all respects, and the magistrates pleaded that there was no defect, no *culpa* on their part, no carelessness nor want of vigilance on the part of the jailor, but that the escape was effected only by the most powerful instruments and forces having been applied. Held, nevertheless, that they were liable.

Action was raised by the respondent against the appellants, as responsible for the escape from prison of his debtor, William Herries, cattle dealer, imprisoned for debt in the prison of Kirkcudbright.

The escape was effected by the use of tools, used in cutting a hole in the ceiling of his chamber, and wrenching a strong bar out of a window.

The defence stated by the magistrates was, that the responsibility, in such cases, only attached where the escape implies *culpa* on their part, as for example, an escape effected through the negligence or connivance of the jailor; but here there had always been the utmost vigilance and care bestowed in keeping the prisoner. There was no laxity in watching; and the prison was in all cases sufficient and strong, so as to make the escape appear to many almost miraculous.

The Court found the magistrates conjunctly and severally liable in payment of the principal sum and interest libelled. And, on reclaiming petition, they adhered. May 28, 1803. June 17, 1803. July 2, ——

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—Although by the law of Scotland, it is required that prisons shall be secure and sufficient, yet it understands this sufficiency in a qualified sense, and not to cover forces and powerful instruments, as in this case were irresistibly used. It does not require that the magistrates shall provide guards around the prison wall all night, nor that the jailor should watch at the prisoner's door night and day. It does not require the prison of debtors to be like a felon's cell, shut up with close barred boards, in fetters and chains. Nothing of all this it understands. So that, before the magistrates can be held responsible, it must be made out that the jailor was negligent of his duty, or that the prison was insufficient for the purpose of safe custody. Here neither the one nor the other is proved to have been the cause. The jailor was vigilant. The prison was strong. And the only efficient cause or agent was the mechanical instruments that were applied.

Pleaded for the Respondent.—The magistrates are the keepers of the prison, as delegates of the crown. They are bound to have the prison sufficient; and to keep the prisoners securely. This duty is not imposed without a valuable consideration. They receive value in the privileges which the burgh enjoys. And the *reddendo* of their charter, by which the burgh holds of the crown, binds the vassal to "watch and ward." But, in point of fact, the prison here was insufficient. It was too low in the roof; the joisting and floor above were accessible to his operations. It was not arched; nor was there a ceiling, which would have prevented his operations from being carried on quietly. The joists were weak, and of fir deal; and the door on the stair

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defended only by a single wooden lock, and the window by a single bar of iron. Besides, had the jailor been vigilant, no such instruments could have been admitted into the prison, nor any of the operations carried on. The magistrates have adduced nothing in justification; and the onus of proving this lying on them, they must be held liable.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellants, *Sir Samuel Romilly*, *Henry Erskine*.

For Respondent, *Geo. Jos. Bell*, *Fra. Horner*.

NOTE.—Unreported in the Court of Session.

[M. App. Part I. "College," No. 3.]

Dr. ROBERT ARNOT, Professor of Theology in St. Mary's College, and Rector of the University of St. Andrew's; Dr. JAMES PLAYFAIR, Principal of the United College; Dr. JOHN HUNTER, Professor of Humanity; and Dr. JOHN ADAMSON, Professor of Civil History, in the said United College; and Dr. JOHN TROTTER, Professor of Ecclesiastical History in St. Mary's College; all in the University of St. Andrew's, ... } *Appellants;*

Dr. GEORGE HILL, Principal of St. Mary's College; MR. NICOLAS VILANT, Professor of Mathematics; Mr. JOHN COOK, Professor of Moral Philosophy; the Rev. HENRY DAVID HILL, Professor of Greek; all of the United College of St. Andrew's; the Rev. JOHN COOK, Professor of Hebrew in St. Mary's College; and Dr. JAMES and Dr. JOHN FLINT, styling themselves Joint Professsors of Medicine; all in the University of St. Andrews, . } *Respondents.*

House of Lords, 26th May 1809.

COLLEGE—ELECTION OF PROFESSOR—CHANDOS FOUNDATION.—An election having been made of Dr. James and Dr. John Flint, as