

The ordinary prison for life of his Character, where the Deponers were kept at the time, and delivered a Copy of the letters to them, they refused to receive the prisoner when a force to them and suffered him to escape; having produced a Notarial Instrument thereon, taken before Witnesses Subscribing, offered to instruct the Jury of the fact by these Witnesses; and also produced the Citation with the Messengers Subscribed Note on the back thereof mentioning the fact and referring to the Instrument afore said, but having the Execution of the Citation or Charge against the Magistrates to apprehend the prisoner: the Lords found the Instrument under the hand of a Notary not sufficient to supply the want of an Execution of the Citation and Charge against the Magistrates and therefore dismissed him on June 17th 1704 against Magistrates of the County of ... because Execution of a Citation required as a specialty necessary by law for proving a charge being charged or apprehended by Citation. The intention of the Statute being to charge the principal Debtor must be summoned who is bound to pay the Debt directed for repair: yet where Magistrates are appointed for payment of a Debt owing by one thing, require to execute without citation against the Debtor: it is not necessary to cite the Debtor: because the Statute does not extend against him, and the Magistrates are appointed to receive his own Debt or discharge him to the authority, whose is the principal Debtor. *Case of the Debtor, 2d June 1689.* It is contrary to the Statute of the 1st of James II. in a precept against a Magistrate for payment of a debt, to cite the Debtor or at whose instance the Debtor is summoned to appear in their prison. *Case of the Debtor, 17th June 1689.* The Lords found that the Magistrate did the execution in the manner and manner provided. Albeit it was proved for him, that he did receive and produce the assignation to the Debtor, yet was it found against him at the Bench, but it was enough for him to show that his debtor was apprehended and incarcerated and had made his escape for which the Deponers must be liable. *January 1682. Reding contra Haverhill of Leyn.* A subsidiary action is competent against Magistrates calling one incarcerated out of prison without a just cause, as a warrant from the Lord of Session, or sickness and Extremity and danger of the prisoners life attested by the signed Declaration upon oath of a Physician, Surgeon, apothecary or Minister of the Gospel in the place, &c. recorded in the town books. And even in the case of such attestation of the dangerous state of his health, the Magistrates can allow him only Liberty to reside under Guard in some house within the town during the continuance of his sickness; and are obliged upon his recovery to return him to prison. *Act of seder. 14 June 1677.* Seeing Squales

carceris, designed to oblige Debtors to deposit Money in their freedom, which Magistrates should not to them, prejudice favour into an bare confinement. But the Lords of Session did upon a Bill allow a prisoner for cell to go out of prison in the day time for the space of his week with a keeper, the Magistrates being liable if he should escape; were proved that he intended to sit in his bed; which he could not do unless he was allowed such a liberty. Albeit some of the Lords were of opinion, that they had no to see to the execution of the Statute, but to commit without the Statute, the duty of the Magistrate of the County of ... the applicant. It was not the time relevant to the Magistrates transporting a prisoner out, but the Messengers to commit him to their prison, but to commit him to the house of a friend to another prisoner, or to be taken to his escape; the Messengers being found at office by pulling him in prison, which case is than to be done not there after. *Case of the Debtor, 17th June 1689.* Both the Principal Magistrates that the prisoner got out by pulling down or pulling out the Aqueducts the iron gates of the prison, and down the rock and the band of the door: being found for whom Magistrates are also liable might be held competent by the law, and be that the execution of the Statute is there stated. *Act. 1782.* The were held competent to a prisoner Magistrates from their duty, it were said to let prisoners go in their own will or solicitation. Thus Magistrates were found liable for the death of a prisoner escaping out of their prison, albeit the prison had four double doors without one another at the top of the inner wall, near an Iron door; and the person incarcerated having seen his way conveyed in some Mason or Brick tools, had in the night time broke at the locks and escaped. In respect there was no chains and Cal bands on the Locks upon the outer doors of the doors to which the prisoner could not reach, tho it was the ancient custom of the Burgh to put Cal bands only upon prisoners for crimes. *11 Feb. 1671.* Will contra Town of Carcadie. Magistrates were found liable for the death of a prisoner who made his escape in day light by breaking the roof of the prison, because the town officers should guard the prison in the day time. *23 Novemb. 1664.* *Hay contra Magistrates of Elgine.* It will not exculpate Magistrates from answering for a prisoners escape, that they apprehend and recommit him. *In*