

Ch. 1.
Of Prison-breaking.

Prison Breaching Called in the Law of England *Quarant* or *prison* is when a person has trained of his liberty by lawful Authority, does Escape from his Confinement, without being Delivered by due Course of Law. For there are not only prisons in *India*, as the Common goal, but also prisons in *Law*, as the *Stocks*, the Custody of any officer that had one Under Arrest *Book 2 Just. 589. Hale pl. Cr. 107.*

Since prisons are the securities of the public peace and founded by Authority, those who break them are severely punished according to the Nature and degree of their offence and prisons are broke either by the prisoners themselves or by others.

By the Civil Law, one imprisoned for breaking and Making his escape out of prison, punished *pena fustis* i. e. *pr. f. Effector*. Which some understand of a Natural death *Stat. Mattheo de Crim. lib. 47 tit. ult. cap. 1 n. i.* Others, *Cytilis Diminutio* or a Civil death. *Jo. Voel. Com. ad tit. ff. de fust. & c. lib. 40. c. 9.* Others will have the pain of death inflicted if the Breaker was imprisoned for a Capital Crime, and only an Arbitrary punishment if the Crime he stood committed for was not Capital. *Prosp. Garin. de fust. lib. 30 n. 43. Farrior. Crim. part 3 qu. iii n. 94 & seq.* Which last opinion is agreeable to the Law of England where by none who break prison are to have judgement of life or Member for *London*. Whilst the Party of his Imprisonment did *habe* such judgement if he had been convicted *20 Cr. 2. 40* such judgement if he had been convicted *20 Cr. 2. 40* a person committed for high treason becomes guilty of felony only, and not of high treason, by breaking the prison and Escaping singly without letting out any other prisoner *Book 2 Just. 590. Hale pl. Cr. 109. Hawkins pl. Cr. lib. 2 chap. 18 516.* And breakers of a prison in other cases are punishable only for a high Misdemeanor by fine and Imprisonment *Hawkins*

Ch. 20. There is no Express statute in Scotland Determining the punishment of Breakers of Prisons but our Lawing to the Nature of the offence *Medonno Crim. part 1. tit. 22 5 infim.* And it was found *Relevant* to give an Arbitrary punishment, that one imprisoned for house breaking and the 20 June 1715 John Bringle for horse stealing in November 1720 James Inghel did break and Made his escape out of prison.

In England prison breaking imports the use of force or Violence, and not such only as may be justified by the Construction of Law. In any 20 Cr. 2. n. 40 *Book 2* of it. Therefore if without Obstruction a prisoner or one for a Capital Crime go out of the prison doors being open by the Negligence or Negligence of the goaler, or other means escape without using any kind of force or Violence, as through a breach in the prison made by others without his procurement or party, he is guilty of a *Misdemeanor* only and not of a felony, and cannot be punished for the Breaching, but only for the Escape *Book 2 Just. 588 589. Stat. pl. Cr. 21. a. Hale pl. Cr. 108. Hawkins ibid.* But in Scotland, if a person imprisoned for Civil debt, go out of prison the without Violence, he is *de facto* to an Arbitrary punishment *McKenzie Ch. 22. Glid.* a prisoner for Civil debt who made his escape out of prison when Broken, being judged as guilty of breaking the prison, and is liable to severe punishment in his person and goods, and to pay the Damage done to the prison. It was pleaded for the Prisoner that only prisoners for Criminal causes can be punished Criminally for breaking of prison, and that these in Custody for Civil debt are upon such account punished only by being obliged to pay the Debt whether it be just or unjust. 20 of One single going out of prison Broken by others without his Assent or Consent, is no Crime more than his Running away from a Messenger *ibid.*