

be, whether the Commitment <sup>was</sup> for a Civil or Criminal cause  
 Penoz. ad Jut. Cod. de Jure. Reo. Because it is lawful, as it  
 is Naturaly to every Man to seek to save his life or recover  
 his liberty. And by going out of an Open prison, no prejudice  
 is done to nor Violence is done Against Authority. It is  
 lawful to Breach the pannel to be Art and part of Breach-  
 ing the Prison, because he went out of it when Broken,  
 seeing the end doth not necessarily Injure the other a person  
 may go out of prison without Breaching it. No Damage  
 can be Claimed from the Pannel for his going out of  
 prison, because he thereby occasions No Damage, It was  
 Reported for the pursuer of Breaching the house of a  
 private Man and thereby giving occasion to steal his goods  
 to be a high Crime; much more is the Violation of Authority  
 by breaking the Kings prison, and Enlarging his prisoners  
 which is publick and such, the pannel was imprisoned only for a Civil cause, it is so far from  
 being an Exemption, that it is an Aggravation of his  
 guilt; seeing he had a legal liberty to get out of prison  
 by suspension or other ways, without proceeding to such  
 a Contempt of his Majesties Laws, as to break prison  
 if the Civil law doth not Confess quid Effragari, et  
 puniunt Effractoris and qui Effractor Carcerum Effra-  
 toribus Evasoribus, without distinction. l. 1. p. 1. de Effra-  
 toribus l. 13. ff. de re Militari, which for John Skelton  
 (found. in stat. David. 2. cap. 1.) observed to be our law.  
 And it is the Common opinion of Lawyers, that the going  
 out of a Broken prison is a Crime. The pannel ought  
 to have taken no Advantage of another Mans offence  
 but should rather have hindered the Breaching of the  
 prison, and tried or avoided the keepers of being  
 the Duty of every Subject to prevent the Commission  
 of a Crime to the affront of his Majesties Authority  
 and qui non prohibet subleventur facere. Where  
 as the pannel was so far from hindering or Dis-  
 covering the fact, that he concurred therein to his

his escape at the juncture of the Prison being broke in a  
 clandestine way thro' a hole and holes of Night, when  
 it could not be known what Resolutions were made thro'  
 in; the Pannel, who thought not fit to stay to clear his  
 Innocence ought to be Reputed Accessory, It is so said  
 by way of Excusation, that the prison was broken by those  
 Duped for the pannel; if the Civil law doth not punish  
 those who simply escape out of prison without Violence  
 but only the Breachers of it, as appears from the  
 title of the Pandects de Effractoribus as when it puniunt  
 eos qui Effractor Carcerum Evasoribus, that must be Under-  
 stood of prison breakers escaping for Mignum non domus  
 Excedere rubrum, the law in a title ought to be Inter-  
 preted according to the Rubric or Inscription, there is to  
 down only a Citation of the Civil law. And when we see  
 Prisoners going out of Broken prison to be a  
 breach of Prison, that is on ly when it doth not offend  
 can be said: so that a breaking it shall be necessary. Again,  
 the law reasonable going out of an open prison is a  
 Crime by the Civil law, it cannot be Countenanced as Cri-  
 minal in fact and, without an Express Statute or Con-  
 stant Custom punishing it as such; many Crimes in the  
 Common Law that being taken Notice of in our Laws, shew  
 seeing no harm followed upon a Soldiers taking such  
 Advantage of an Open prison, save a hazard to the Bro-  
 der of wanting payment of his Debt, it ought not to  
 be punished otherwise than by payment thereof: Breaching  
 or not hindering is only punishable in treason, or where  
 the party was bound Nations officij to his Masters or Lords  
 if No Crime should be fixed upon any person without  
 proof; and the Difficulty of proving the pannel's ac-  
 ception to the Breaching of prison other ways than by  
 a presumption arising from his being in the prison  
 all the time and going out of it so soon after a party  
 was made, might be ground for admitting special Pri-  
 vileges to bear witness, which law doth not allow.