

It is better the Prisoner be not proved than that it be proved
 by such a presumption. And if it were necessary for this
 pannel to exculpate himself by proving that either broke
 the prison, he might be found guilty; tho' all together
 Innocent. The Lords found the Judgment Relevant to infer
 an Arbitrary punishment 23 July 1678 Francis Jones
 of H. Ct. in which case the Justice Assizes they pannel
 what it was proved that he was in prison, and that the
 prison was broke and he came down out of it upon a Re¹⁵
 respect it was not proved that he broke the prison. The
 Verdict was contrary to the Juror's opinion of the Judges.
 Some Lawyers are of Opinion, that, tho' one Committed for
 Civil Debt be left Subject to an Arbitrary punishment
 for coming out of prison without any force; a prisoner for
 a Criminal for a Criminal cause may lawfully make his
 Escape out of prison if no Violence was used in his
 Escape. Forz. & Gilt. Cor. 20. Gilt. Cor. 11. 16. *Ignorantia
 Crim. part. 1. Gilt. 22. 32.* Because Ignorantia in qui facit
 quinnam finem qualiter deceptum Voluit h. d. *Ignorantia
 bon. son. qui Moli.* One whose life or limb is at stake is
 than a prisoner for Civil Debt. But in Scotland it was
 found Relevant to infer an Arbitrary punishment
 against one imprisoned for a Crime, that he came out of
 prison by stealth, without using any Violence in his
 Escape. 1720 Alexander McGregor alias Campbell
 because the Essence of this Crime consists in the Breach
 of Authority, and the Danger arising from practices of
 this kind; whereby the greatest Criminals might
 Escape; and continual Machinations be carried on
 further their Escapes. However the opinion of these
 Lawyers who would have a prisoner for a Crime sub-
 jected to the same punishment for making his Escape
 out of prison as if upon trial he had been brought in
 guilty of the Crime, is too severe to be afforded in great
 young Men may choose to make their Escape out of
 prison to shun the hard Usage of Arbitrary

Well as from a Consciousness of guilt Mr. Jones said.

By the Law of England, One who is bound to be guilty of
 prison breaking, who breaks out of Confinement who is
 was Under lawful Arrest and has barnt of his Liberty,
 whether in the Common goal or other prison, or in the house
 of a Constable or in the Stocks &c. for non payment being
 the thing other but a Restraint of Liberty. *Hamf. p. l. Cor. 30 d.
 Coke 2. Inst. 289. H. l. p. l. Crim. p. l. Cor. 1. 2. 2.
 Chap. 18. 17.* The Law of Scotland doth punish not only such
 as break the Kings prison, or fly out of Jail when open, with
 also such as break the prison of a Bailiff of Barony, as the
 number 1699 Incheis of Baroch Hoa, one apprehended by
 the Sheriff of East Lothian for Robbing the Sheriff, and
 sent to a Bailiff of Haddington to be Detained till further
 orders, having upon the Bailiff using him so Indelicately,
 and not to put him Instantly in the publick prison, but
 to keep him or a gentle guard in his own house, trusting to
 his fear of honour that he would not withdraw himself,
 stole away privately and made his Escape out of the
 Bailiff's house, without breaking door or Windows. An
 Indictment against him upon that head was found relevant
 to infer an Arbitrary punishment, altho' the principal
 crime of Robbery should not be proved against him
 13 July 1691 John Peaton. Because his imprisonment is no
 thing but a lawful Restraint of Liberty, and therefore
 pannel was so found relevant. *Hamf. p. l. Cor. 30 d.
 Coke 2. Inst. 289. H. l. p. l. Crim. p. l. Cor. 1. 2. 2.
 Chap. 18. 17.*

By the Law of England a person committed for high
 treason who breaks prison and escapes, is guilty of felony
 only, unless he doth also escape with a party. But
 one who detains a person committed for any guilty
 of high treason knowing him to be so committed is guilty
 of high treason. *Hale lib. 109. Hamf. p. l. Cor. 30 d.
 Coke 2. Inst. 289. H. l. p. l. Crim. p. l. Cor. 1. 2. 2.
 Chap. 18. 17.* In Scotland the breaking up the Door of a Room
 within a prison wherein persons were confined for
 Capital Crimes, or the setting fire to the Door of prison