

quo quis lib. 2. cap. 302 n. 2. Carpizov. Crim. part 3 qu. 111  
 n. 95. 100. Jo. Voel Comm. ad Tit. ff. de C. Tit. 2. Rub. 2. Noor.  
 n. 8. Tit. add. by the law of England, Stamp. pl. Per. 32. i.  
 Hals pl. Cr. 119. 115. Hawkins pl. Cr. lib. 2. chap. 19 § 22.  
 the keeper of a prison who being bribed or other ways  
 influenced voluntarily suffers his prisoners to Escape, or  
 makes way for it, is liable to the same punishment the  
 was due to the prisoner. In England a prisoner who breaks  
 prison may be arraigned for such offence before he be convicted  
 of the crime for which he was imprisoned Hals pl. Cr.  
 110. Hawkins ibid. chap. 18 § 17. And he who receives one  
 imprisoned for high treason, may be arraigned before he be  
 convicted for high treason: For that one high treason  
 all offenders are principals. But if the person received  
 were imprisoned for any <sup>other</sup> capital crime, the receiver  
 cannot be arraigned till the principal offender be first  
 attainted, Hals pl. Cr. 110. § 16. Hawkins ibid. chap.  
 21 § 8.

By the civil law Chult. 52 l. 6. l. 12 ff. de Custod. lib.  
 and in the opinion of the Doctors there of (Carpizov. Crim.  
 part 3 qu. 111 n. 1058 fagg. Gronov. ad Tit. ff. de C. Tit.  
 Noor) when a prisoner gets away against the keeper's  
 will, through his fault or Negligence, the punishment  
 of the keeper is arbitrary according to the Degree of  
 his fault, who is liable to the exactest Diligence, he  
 being a publick servant who gets a fee or salary. By  
 the Common law of England, the punishment of such  
 Negligent Escape is only a fine viz. 100 pounds if the  
 prisoner was attainted, five pounds if only indicted, and  
 a fine at Discretion of not so much as indicted. Hals pl. Cr.  
 113. Hawkins pl. Cr. lib. 2. chap. 19 § 33 to be paid  
 by the Negligent officer. The offence of this kind  
 are also punished by Statute 19 R. 7 cap. 10. By the  
 law of Scotland, where a prisoner for Debt Escapes  
 through the keeper's Negligence in his duty, the keeper  
 must answer for it Debt or for the Debtors body  
 Stat. Rob. 1. cap. 19 n. 3. Melbour. Crim. part 1. tit. 23 § 3.

And must purge himself by oath, that the Escape was  
 without his will or consent Stat. David. 2 cap. 1 m. 6. Which  
 is agreeable to the opinion of the Doctors (Hoff. Gronov. Car-  
 pizov. qu. 91 n. 74. Monach. de Arbitr. Tit. qu. lib. 2. cap. 302 n. 2. Potho  
 de juris fitendi cap. 41. Jo. Voel Comm. ad Tit. ff. de C. Tit. Noor  
 n. 6. It would seem reasonable, that the a keeper were not ju-  
 ristically for his prisoners Escape liable to answer for them  
 his servants for whom he is answerable should be liable in  
 satisfaction for Damages and Interest to the parties injured  
 by the escape of prisoners than their slightest Negligence  
 (Gronov. Crim. lib. 2. n. 16. Upl. the Captain of a ship is liable  
 nextly to the loss of his ship for not finding out a pirate  
 against him before the removal for taking prize ships  
 having escaped in women's clothes the said Lord after trial  
 of the keeper's Innocence and Diligence by Examining him  
 and his servants concerning their having or not knowing of  
 or accession to the Escape, a forfeited the keeper's bond  
 the prisoner having Escaped Neither is Majori which  
 could not be kept, nor castor's torts which could not be  
 foreseen or prevented, the keeper could not be altogether  
 blameless. In respect keepers of prison were in effect  
 Depositories of the bodies of prisoners, of which the keeper  
 did doleful take care with neither. of which the keeper  
 here could be charged 18 R. 23 November 1673 Vane contra  
 Lady Land & others observed by Sir Robert Sir Matthew  
 Hals (pl. Cr. 114) tells us that by the law of England  
 if the keeper after a Negligent escape before he be puni-  
 shed detains the prisoner upon fresh suit, he is excused.  
 others are of opinion, that he in an Action against  
 a keeper for suffering one arrested in a civil Action  
 to Escape, it is a good excuse for the keeper, that he  
 soon brought he detains the prisoner upon  
 fresh suit, yet the like excuse would not serve for  
 the Negligent escape of a Criminal, because this  
 is an offence against the publick, and the other is  
 only a private Damage to the party, Hawkins pl. Cr.