

operated by the *squalor carceris*. The pursuer, therefore, has suffered no damage by the supposed *culpa* of the Magistrates, and, of course, can have no claim against them on that head, Erskine, Book 3. tit. 1. §. 14. Late case, Gillies *contra* Walkers, *see* APPENDIX.

No 76.

*Answered*, Did such a practice, as that alleged by the defender, really exist, it would be very unnecessary and improper. It is, however, sufficient to observe, that the law supposes that, by the *squalor carceris*, payment may be obtained; and this is the foundation of ultimate personal diligence. It is not the part of a Magistrate to retard the execution of that diligence, upon any pretence. If, in breach of his duty, he does so, he must answer for the consequences.

The Court, without entering into an investigation, either of the alleged practice, or of the other circumstances, were of opinion, that the Magistrate, in refusing to aid the diligence of the law, was culpable, and therefore adhered to the judgment of the Lord Ordinary, which was,

“Repels the defences, and finds the defenders liable in the contents of the bills pursued for.”

Lord Ordinary, *Braxfield*. Act. *MacLaurin*. Alt. *Crosbie*. Clerk, *Menzies*.

L. Fol. Dic. v. 4. p. 136. Fac. Col. No 6. p. 12.

1781. March 7.

WILLIAM FULLERTON and DAVID KENNEDY *against* The MAGISTRATES of AYR.

No 77.

THE following circumstances were found sufficient to subject the magistrates of a burgh to the payment of a debt due by a prisoner, in terms of the act of sederunt 14th June 1671, entitled, ‘An act against the magistrates of burghs for letting prisoners for debts go out of the tolbooth.’

Instead of complying with the act, by requiring the attestation of a physician upon oath, bearing that the debtor actually laboured under a disease, attended with deadly symptoms, they had dismissed the debtor, upon the physician’s declaring, upon soul and conscience, that the debtor’s continuance in confinement might, by reason of his valetudinary state of health, prove fatal to his life; and, instead of confining the debtor in a house within the burgh, and remanding him to prison upon his recovery, they had allowed him to go through the country for the space of five months, in the exercise of his profession as a country surgeon.

It may likewise be remarked, that the magistrates had accepted a bond from the debtor’s friends, securing them against the consequences of their procedure.

Lord Ordinary, *Hailer*.

Act. *Robertson*.

Alt. *Crosbie*.

C. Fol. Dic. v. 4. p. 136. Fac. Col. No 47. p. 85.

VOL. XXVIII.

65 F

I