

1791. game. Such indeed is a breach of the law. It is an act of
 _____ trespass, punishable in a criminal manner.
 MAGISTRATES OF ANNAN v. SHORTREID, &c. After hearing counsel, it was
 Ordered and adjudged that the interlocutors be affirmed.
 For Appellant, *T. Erskine, Alex. Wight.*
 For Respondent, *J. Anstruther, Tho. Macdonald.*

THE MAGISTRATES of the Burgh of Annan, *Appellants* ;
 MRS. NANCY SHORTREID OR JOHNSTONE, }
 Widow of the late William Johnstone, } *Respondent.*
 Writer to the Signet, . . . }

House of Lords, 15th April 1791.

IMPRISONMENT OF DEBTOR—LIABILITY OF MAGISTRATES.—A messenger having apprehended his debtor, and given him to the Lord Provost of the burgh, for the purpose of having him imprisoned in the common jail. Instead of this, he was put into a room adjacent to the court room, where he enjoyed the privilege of open jail. Held, that the magistrates were liable in payment of the debt, for not instantly incarcerating the debtor in the common prison.

This was an action raised by the respondent against the provost and magistrates of Annan, for not having properly incarcerated her debtor, after he was handed over to the provost by a messenger at arms for that purpose, the said debtor having been apprehended under a caption for a sum of £1326. at her instance ; and instead of being put at once into the common jail or prison of Annan, he was kept and detained all night at an inn or tavern, being part of the evening under the charge of the provost, and part left to himself unguarded,—the provost having left him at ten o'clock at night until breakfast time next morning ; and then only put him into a room adjacent to the court room, and not into the common jail, under lock and key, which was giving the prisoner, what was called in Annan the privilege of open jail.

The party apprehended was the sheriff-depute of the county of Dumfries ; and the reason why he was not put in the jail was, as alleged by the provost, that there was no fitting accommodation for the prisoner there—it being full. The debtor sometime thereafter took out cessio ; and, on its being opposed by the respondent, she consented to with-

draw her opposition on receiving £400, being part payment of her debt. Whereupon it was a defence stated in this action, that having consented to liberate him in the *cessio*, she had virtually abandoned her plea of illegal imprisonment.

The Court of Session found the provost and magistrates liable in the debt for which the party was apprehended.*

Against these interlocutors the present appeal was brought.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *Sir J. Scott, Wm. Tait.*

For Respondent, *T. Erskine, W. Grant.*

1791.

MAGISTRATES
OF ANNAN

v.

SHORTREID,
&c.

June 8, 1790.

— 24, —

July 8, —

— 9, —

Dec. 7, —

* Opinions of Judges:—

LORD PRESIDENT (CAMPBELL).—“ This is an action against magistrates for not having duly confined a prisoner.

“ 1. The first ground is, that he was not imprisoned until near 24 hours after being delivered into the hands of the provost. No detention during the night. The prisoner was left entirely to himself from about 10 o'clock at night, when he went into his bed room, till next morning at breakfast, when provost came again to the inn. No guard or other precaution.

“ If kept in private custody, which may be allowed for a reasonable time, the prisoner must be watched and guarded. Whereas Mr. Armstrong was at full liberty for 10 or 12 hours. It is not enough to say that he did not go away, for he might have done so if he pleased, and was not in custody at all during that time.

“ It is of no consequence that the magistrates were not charged to detain him. The provost's receipt for his body was equivalent. It was of no consequence whether this was at the hour of six or at the hour of ten o'clock; and no matter what conversation the provost held about time of committing him to prison. The messenger did his duty, and left it to the provost to do as he pleased afterwards.

“ This ground, therefore, for subjecting the defenders (magistrates) seems to be conclusive, and not affected by the proceedings in the *cessio bonorum*.

“ 2. Ground. The privilege of OPEN JAIL, as explained by practice at Annan, is illegal. Law does not require that a debtor should be closely confined to this or that particular apartment in prison, but certainly requires being locked up within the prison walls, so as that the prisoner shall not, by merely opening the latch of a door, go out into the street if he pleases.

“ Had the outer doors of the prison been kept locked through the day as well as the night, or had he been locked into an inner apart-