

267.
Pro libe chap. 19 § 12. What ever be ad to this, the Gaoler
by Retaking a fugitive prisoner without Allowance for ad-
vintary escape. Hawkins. ibid. § 12. Which seems Agreeable
to the opinion of the Doctors of the Civil law Prosp. Tra-
vinsol. Barabid. que 31 in 64 & page 9. The discharge of a pri-
soner may prove his care and Diligence by his familiars
and Domesticals Prosp. Farm. ibid. n. 128. 129. And he is
Accountable for the Escape of prisoners thro' the fault
or Negligence of the Gaoler, keeper or servants put in by
him self, but not of those put in by others by ill. pr. B.
de Custod. & Exhib. Recor. Prosp. Farm. ibid. n. 49 & 57.

An Indictment for breaking prison, and Dismissing
prisoners out of it, is Obsolete without Naming the pri-
soners 20 November 1699 Inclairs of Barack & others.
And such an Indictment for breaking the prison of
a burgh of Burony, and setting the prisoners at liberty,
was Justained at the Kings Advocates instance, who
no private party Jurors did join in the prosecution.
Altho' it was pleaded in Defense, that his Magistrates
Advocate alone had interest only to sue for the breach
of a publick prison, Viz. that of a burgh Royal or of
the Magistrates and Answerable for the Prisoners
by law, 20 November 1699 Inclairs of Barack & others.