

an imprisonment for a debt. As the prisoner was restored to prison, no possible loss could accrue to the creditor, and so the jailor is not liable: had the prisoner not been restored to prison, the case would have been different.

HAILES. My displeasure at the presumption of the jailor, in taking upon himself to allow the prisoner to be at large, made me overlook the just sense of the Act of Sederunt.

On the 24th January 1786, "The Lords assoilyied the jailor;" altering the interlocutor of Lord Hailes, but "found no expenses due."

*Act. Ch. Hay. Alt. Allan M'Connochie.*

1786. March 9.

CHARLES SALTER, *Petitioner.*

SALE.

How far, by the measuring out of goods, without further delivery, the property is transmitted?

[*Faculty Collection, IV. 391; Dict. 14,202.*]

ESK GROVE. Had the malt been put *in publica custodia*, the case would have been clear; but, here, all that appears is an acknowledgment, by the seller, that he had measured out the malt. But, *quære*, How can the creditors be in a better situation than the debtor? The debtor must have delivered the malt, the price of which he had received.

BRAXFIELD. There is no difference between a factor in a sequestration and a creditor who poulds. It is strange that men will pay before delivery, when there are so many bankrupts appearing every day. If they do, they must suffer for their own negligence.

On the 9th March 1786, "The Lords refused an incidental petition, praying an order on the factor under the sequestration, for delivery of the sixty bolls of malt."

For petitioner, H. Erskine. *Alt. John M'Laurin.*