

And on the Ordinary's report, on the 12th July 1748, of the possession of which the pursuer's employers had at the time; THE LORDS 'found the town liable.' See PRESCRIPTION, TRIENNIAL.

No 12.

*Kilkerran, (COMMUNITY.) No 2. p. 130.*

## S E C T. II.

Whether Magistrates are liberated by expiry of their office.

1624. *January 15.* L. DRUMLANRIG *against* BAILIES of Hawick.

THE Laird of Drumlanrig having obtained decret before the Secret Council against the Bailies of Hawick, then being in office, and the clerk, decerning them as having no right by virtue of their infestment, to impose any taxes upon their neighbours by their acts of court, to desist from doing of the same in time coming; and that decret being transferred in the Laird of Drumlanrig's person, as succeeding to his right, who recovered the sentence; charges the Bailies, against whom the decret was first given, after the expiring of their office, and after that new Bailies were placed, and their clerk, to obey the decret, which was suspended. In the discussing of the which suspension, THE LORDS found, that the said decret of Secret Council might have execution, seeing the same was transferred as said is, by letters of horning and summary charges, without any other transferring, or longer process against the Bailies, and next succeeding magistrates, or any others bearing office before them, they being an university, and the first sentence being given against the defenders therein as Bailies; for albeit their office ceased by the new yearly election, whereby they could not be further charged as representing the body of the town, yet it was not reason that the execution and force of their sentence should be frustrated; but the LORDS found the succeeding magistrates stand subject to obey the same, and that the said sentence ought also to have execution against the same persons against whom it was first given or transferred, *ad hunc effectum, viz.* to cause themselves desist and obey the sentence, but not to take the burden for the body of the town; and also found, that the clerk was not a member, to be repute of the council, or as a magistrate, against whom any charges could be execute upon such decreets given against the magistrates; and therefore suspended the letters and charges executed against him; and in respect the said decret was given by the Lords of Secret Council against the party then compearing; the LORDS of Session would not discuss the nullity, alleged against the same by way of sus-

No 13.  
Magistrates of a burgh against whom a decree is taken as representing the town, cease to be liable after expiring of their office, but diligence may be followed forth against the succeeding magistrates, the same way as if the decree had been taken personally against them.

No 13. pension, viz. that it was given by the Lords Secret Council, who were not judges competent thereto. See SUMMAR DILIGENCE.

Clerk, *Scott*.

*Fol. Dic. v. 1. p. 157. Durie, p. 97.*

1685. *January.* HONIEMAN *against* The TOWN of Dysart.

No 14.  
The late magistrates of a burgh being charged for arrears of ministers' stipend, altho' bound only *ratione officii*, were found liable; but extract was superceded till the inhabitants should be stented for their relief.

ROBERT WHITE, and others, late magistrates of the Town of Dysart, having granted bond to Mr Honieman, second minister of Dysart, for what was resting of his stipend in use to be paid the Town; and for which the succeeding magistrates had been in use of payment of annualrent; and he having charged the said Robert White, and the other persons subscribers of the bond, for payment, and they having suspended it upon the reason, that they were only bound *ratione officii* as magistrates, and could not be personally liable for payment of the debt; THE LORDS notwithstanding found the defenders liable *in solidum*, to make payment of the principal sum, with the bygone annualrents then resting; but did supercede extract until a certain time, and ordained the inhabitants to be stented for reimbursing the suspender; and the inhabitants were cited for that effect at the market cross of the burgh, by virtue of the LORDS' ordination; and the LORDS appointed a person to stent the inhabitants.

*Fol. Dic. v. 1. p. 157. Sir P. Home, v. 2. p. 661.*

1686. *February.*

MR DAVID LAWSON Schoolmaster, *against* SIMSON, REDDIE, and Others.

No 15.  
The *quondam* Magistrates of a burgh were found liable for a bond granted by them while in office, there being no present Magistrates; but extract was superceded, till the town should be stented for their relief.

SIMSON, REDDIE, and other, having granted a bond for 500 merks, which they obliged themselves and their successors in office to pay; and being pursued for the same seven years after;

It was *alleged* for the defenders, The bond being signed by them only as Magistrates, they are not personally liable, now that they are out of the office.

*Answered*, Though regularly exauctorate, Magistrates are not personally liable for bonds granted by them *virtute officii*; the defenders must be liable in this case, in regard there is no succeeding Magistrates against whom the pursuers can have action.

THE LORDS, in respect of the answer, sustained process against the defenders, and decerned, superseding extract for a competent time, that the defenders might stent the inhabitants of the town, and affect the common good for raising the money. The like course was taken in another process for the second minister's stipend.

*Fol. Dic. v. 1. p. 157. Harcarse, (MAGISTRATES.) No 679. p. 193.*