

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charged for arrears of ministers' stipend, altho' bound only *ratione officii*, were found liable; but extract was superceded till the inhabitants should be stented for their relief.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burgh were found liable for a bond granted by them while in office, there being no present Magistrates; but extract was superceded, till the town should be stented for their relief.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.*