

1695. February 7. BOWIE against WILSON, &c.

ARNISTON reported Bowie *contra* Wilson and other inhabitants of Culross. The question was, if the creditors in the bond followed the public faith of the town of Culross, in accepting this security, or if it was the party's meaning to bind the subscribers personally, and their heirs, seeing it obliged them to pay it conjunctly and severally. But the LORDS having read the bond, and found it bore to be for the town's use, and that they were designed as Magistrates, and obliged themselves, and their successor's in office; and they being *now functi* and exauctorate, they found it only obliged the town, and not them, except for their proportions, in so far as they were members of the community.

*Fol. Dic. v. 1. p. 157. Fountainball, v. 1. p. 667.*

1752. July 10.

CLELAND against The Present MAGISTRATES of Pittenweem and Others.

In the year 1743, the Magistrates and Town Council of Pittenweem having occasion for L. 82 Sterling for the necessary affairs of the burgh, applied to George Innes of the Royal Bank to lend the money, which accordingly he did, upon Robert Cleland writer in Edinburgh becoming bound for the same, with the four then Bailies of the burgh; but not till after the proper acts of council were made, which are required by statute to subject the community for the money borrowed. A particular act of council was also made, authorising a bond of relief to be granted to Robert Cleland, and enacting that the Bailies and Council for themselves, and as representing the whole community of the said burgh, and their successors in their respective offices, should be bound and obliged to relieve him, no part thereof being for his use, but only for the use of the burgh.

Innes the creditor, having used diligence against Robert Cleland, obtained payment, and Cleland having obtained letters of horning upon the bond of relief, and thereupon, on the 3d July 1749, charged the subscribers of the bond, as also the then Magistrates and Treasurer, and thereupon taken out caption against them, they obtained suspension from three Ordinaries in time of vantage, upon their consigning a disposition of the public funds and common good of the burgh to the charger; at discussing whereof the ORDINARY found the letters orderly proceeded.

The suspenders reclaimed, and urged, first with respect to such of the suspenders as were Magistrates in 1749, when the charge was given, but are not in office at this day, that they were in no other case than every other private burghess, whose person or effects could not be subjected to the debt of the community, agreeably to the decision of the civil law, *si quid universitati debetur,*

No 16.

Money being borrowed for the use of a royal burgh, and bond granted by the Magistrates, binding themselves, conjunctly and severally, and their successors in office, the town only was found liable in payment, and not the subscribers, after they were exauctored.

No 17.

The Magistrates of Pittenweem granted bond for a sum of money which they had borrowed for behoof of the community. The creditor pursued the subscribers of the bond, after they were out of office, and likewise the present Magistrates. The LORDS found that the granters of the bond were liable by the special conception of it, and the present Magistrates no less so by the public law, which empowers Magistrates to bind their successors in office.