PUBLIC BURDEN.

No. 1. 1747, June 30. COPLAND *against* MOSTINE AND OTHERS.

COPLAND, as tacksman of the cess of Aberdeen for the year 1745 (according to the custom of that burgh, who advance the cess out of the town's revenues, and then let it by public roup) 25th June 1745 gave public intimation calling for payment, and continued to levy, till the Rebels came to town and appointed collectors of their own. After which, on 21st November, Mostine and others made tender to Copland of the cess, when indeed he durst not receive it, or at least must have paid it to the Rebels, and therefore he refused it; and they were afterwards obliged to pay it to the Rebels. After the Rebellion, Copland sued them before the Magistrates, and recovered decreet; and they offered a bill of suspension, which on report we unanimously refused.

PUBLIC OFFICER.

No. 1. 1735, Feb. 6. PATERSON *against* INGLIS.

THE Lords found the action against Charles Inglis, clerk of the bills, not competent by way of summary complaint, but by way of ordinary action.

(The case of Montgomery, *alias* M'Viccar, against Inglis, 8th, 18th June 1748, here referred to, is mentioned as follows:)

Clerk of the bills cannot be convened by summary complaint, to be *subsidiarie* liable for the debt, for having received two tenants as cautioners for one another, bound conjunctly and severally in the tack for the rents charged for. But some of the Judges thought that he might even by summary complaint have been found liable in damages.

A suspension by two tenants having been discussed, this complaint was entered against Charles Inglis, clerk of the bills, for receiving them cautioners for one another, though both of them before liable. It prayed to find him liable as cautioner for them for the whole prestations of the tack decerned against them. We found the complaint with these conclusions not competent summarily in this form; though Arniston and others thought that a summary complaint for damages might have been competent, but not for these conclusions.

No. 2. 1735, July 4. HOME *against* M'KENZIE and JUSTICE.

THE Lords found both clerks liable for the pursuer's damage by the loss of the execution of the adjudication; though the decreet was extracted before Mr Justice's admission.—4th July 1735.

The Lords, 24th July, were generally clear for adhering, though the defenders pressed for a delay; but at last the pursuer desiring it might be delayed, the Lords delayed it accordingly, and expressed that cause in the interlocutor.

The Lords, 20th February 1736, unanimously adhered to the interlocutor, finding the clerks liable.

No. 3. 1735, Dec. 12. YETTS *against* THE OTHER HOUSEHOLD TRUMPETERS.

THE Lords altered Lord Royston's interlocutor, and found none of the household trumpeters bound to communicate their fees for officiating at burials. One of their principal motives was, that they thought the lieges not confined to them alone, and so their fees were not casualties of their office, but the hire of their labour, 21st November 1735.

The Lords, I am told, adhered to their interlocutor, November 21st, finding the household trumpeters officiating at burials, not bound to communicate their fees to those not officiating. (I was in the Outer-House.)

No. 5. 1737, July 22. MR ROBERT FREEBAIRN *against* THE COMMISSARY CLERKS OF EDINBURGH.

See Note of No. 11, *voce* ADJUDICATION.

No. 6. 1737, July 1. DAME MARGARET and DOROTHEA PRIMROSE, *against* THE COMMISSARY CLERKS OF EDINBURGH.

WE were much divided in this case on the point of discussion, not indeed whether decreet could go against these clerks till the executor and cautioner were discussed; for we all agreed, that no decreet could go even superseding execution; and I own I have a difficulty how there can be such a decreet in any case where there is *privilegum discussionis*, since that gives the party power to suit execution, that is to use diligence, whenever he thinks the principal is discussed, though many questions in law may arise what is sufficient discussing,—though that has for some time been the general practice; but the question was, Whether the pursuer could insist in his declaratory conclusion to determine the point of law till the executor and cautioner were discussed?—and it carried that he could, (though by a very small majority.) The next question therefore was, Whether the Commissaries and their clerks were obliged to exact and take caution from executors nearest of kin, and what sort of caution? As to the first, the only thing that made it a question, was the pursuer's overlooking the instructions 1563, where they are expressly directed to take caution from the nearest of kin;—and upon my reading them, we all agreed. As to the other, Kilkerran observed, that in many cases caution is taken, but he knew no law or precedent for making the Judge liable if he took insufficient caution, as in the *cautio damni infecti*, and by ward superiors, liferenters, &c. except allenarly the case of caution for tutors and curators. But I distinguished betwixt the case where a Judge is enjoined *ex officio* to take caution, though nobody ask it, and where it is only to be taken at the suit of a party demanding it. That in this case, if the party who was