

any extraneous creditor) would have been liable to relieve the town thereof, could not, by taking such a bond to himself, subject the town to pay it, except in so far as he or his representatives did instruct an onerous cause, and that the money was *in rem versum* to the community.

No 7.

*Forbes, p. 495.*

1735. December 16.

M'GHIE and Others, *against* MAGISTRATES and TOWN COUNCIL of Edinburgh.

IN a reduction of a tack of the town's impost duty, set by the magistrates or town council of Edinburgh, upon this ground, that it was for an undervalue without a public roup; the LORDS found, that the magistrates were not obliged to set the tack by way of public roup; and found, that the tacksmen having taken the tack from the magistrates, who had power to set the same to them, the reasons of reduction were not relevant against them, and therefore repelled the same, and assoilzied the tacksmen; reserving to the pursuer to insist against the magistrates for mal-administration as accords.

No 8.

*Fol. Dic. v. 1. p. 156.*

1742. January 31.

CUMMING *against* WALKER.

JAMES CUMMING, being chosen deacon of the butchers of Edinburgh, was charged with horning for payment of the sum in a bond, which had been granted some time before by the office-bearers of the corporation to James Walker, in the following terms: 'We the said Archibald Brown, &c. bind and oblige us, and our successors in office, conjunctly and severally, thankfully to content and repay to the said James Walker.' In a suspension of this charge, the case was considered with regard to two different sorts of corporations; one, where there is a power to borrow money, the other where there is none; and, with regard to both, the reasoning was as follows: When a set of men are incorporated in order to traffic, with express powers to borrow and lend, there is no doubt that the present office-bearers, as representing the incorporation, may be sued for payment of money borrowed by their predecessors in office. The reason is obvious; that there is no form for bringing a corporation into a process, but by citing the office-bearers. And, for the same reason, when a bond is granted binding the office-bearers, and their successors in office, the successors may be summarily charged upon the bond; a charge being the only compulsion provided by law to oblige the corporation to do justice to the creditor. But, even in that case, the proper effects of the office-bearer will not be affected by such a diligence; all that can be done is, to throw him into jail, as representing the incorporation. The effects of the incorporation may be attached

No 9.

The office-bearers of a corporation which has no power to borrow money, are not liable to execution for the debts that happen to be contracted.