

trary to the instructions related in the commission, whereby L. 900 Sterling is the sum stated to be agreed for, and with securing the colleges against substitutes nominated by the Captain; whereas, by the agreement there is only 6000 merks absolutely secure, and 11,000 merks further, in case 33,000 merks be recovered, as the Lord Ross and Achlossin's share in the estate.—It was *answered* for the pursuers to the *first*, That there is nothing in the act of Parliament to hinder transactions, but introventions and transactions may be very profitable, when mortifications are not established and liquidate: To the *second*, The university being a corporation, whatsoever is done in a lawful meeting by the major part, is sufficient, unless it were alleged, that by the foundation there were negatives granted to some of the members who did not consent: To the *third*, Albeit the instructions contain special terms, yet there is subjoined a general clause in these words, 'That if the commissioners cannot screw up the parties to the special terms aforesaid, that there is some latitude allowed them, and they are ordained to agree in the best terms they can.'—It was *replied*, That better terms were offered by the relict.—It was *duplied*, That denying any such offer, the same was not made at Edinburgh, or during this commission, but before at London.

THE LORDS found, That the university might transact anent a mortification, whereof the event was uncertain and illiquid; and found, that the major part of the members of the university, in a meeting of the university, giving commission, the same was valid, unless by the foundations there were negatives to the members who consented not; and found, that the general instruction did sufficiently warrant the agreement; but declared, that in case the 33,000 merks were not recovered, that the colleges should have a proportional part, effecting to the 11,000 merks, according to what should be recovered.

Fol. Dic. v. 1. p. 158. Stair, v. 2. p. 605.

SECT. V.

Complaints against Magistrates, to whom Competent.—In Diligence against a Community, who must be Cited.

1739. *January 10.* Competition CREDITORS of MENZIES of Lethem.

THE LORDS found an arrestment laid on in the hands of the treasurer of the Trades Maiden Hospital a proper arrestment, and preferred it to an arrestment

No 30.

afterwards laid on in the hands of the said treasurer, and also of the governors and directors of the hospital : And they also preferred an assignation intimate in the same manner.

Fol. Dic. v. 1. p. 158.

1743. June 9.

JOHN CLARKSON, Baker in Edinburgh, *against* The MAGISTRATES of Edinburgh.

No 31.
Citation of the Magistrates of a burgh, as representing the community, is not sufficient. The Town Council must be cited also, in order to render the community liable for any debt.

A MOB having broke into some granaries in Leith belonging to John Clarkson, and taken a quantity of victual out thereof, he brought an action against the Magistrates of Edinburgh, for themselves and successors in office, as representing the community, upon the act of the 1st Geo. I. entitled, ' An act for preventing 'tumults,' &c. concluding, in the terms thereof, that they should be found liable to him in damages ; and cited the Provost, Bailies, Dean of Guild, and Treasurer of Edinburgh.

Objected to the execution, That the action was not regularly brought against the town, in respect the Town Council was not summoned as well as the Magistrates.

THE LORDS sustained the objection, and found no process. But the pursuer having reclaimed, the LORDS sustained process, and repelled the objection to the execution.

And the defenders having reclaimed in their turn, the LORDS found, That the ordinary form of summoning burghs, by the law of Scotland, so as to make the community liable for any debt, is to summon the whole Town Council, as well as the Magistrates, and therefore sustained the objection against the execution, and found no process.

Fol. Dic. v. 3. p. 142. C. Home, No 235. p. 383.

1747. June 4.

COUNSELLORS of ST ANDREW'S *against* The MAGISTRATES.

No 32.
A summary complaint is competent to members of a Town Council, for wrong done at an election, though they were not at the meeting.

A COMPLAINT being presented against the election of Magistrates and Councillors for the Burgh of St Andrew's, made at Michaelmas 1745, it was *objected*, That it was not competent at the instance of the complainers, as the law gave summary complaints only to the constituent members at a meeting where wrong happened to be committed, and they were not present at the election.

Answered, The act, as appeared by the whole clause, gave the right of complaining to the members of a meeting, that is, the members of the society who might have met.

THE LORDS found the complaint competent at the instance of the complainers, they being constituent members of the Council.

Act. Ferguson.

Alt. Lockhart.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 141. D. Falconer, v. 1. No 178. p. 239.