

pass, whether against the Burgh as such, that is against their Magistrates, and their common good, or if the damages ought and must be recovered from the inhabitants, such as in England? President and Arniston were clear, that only the inhabitants are liable, (though no direction is given in the act how it could be levied, and I know no other instance in Scotland of money so levied.) I thought if that was the import of the act, then the Magistrates, as representing the Burgh, could not at all be decerned, but only the Burgh, leaving the pursuer to execute such decree the best he could, and that therefore the libel were in that case inept; but I was not clear that the Burgh and their common good was not liable. I did not vote in the first, but it carried for the defenders by the President's casting vote. 2dly, It carried, I believe by a great majority, that no action lay on this act for the meal, but only for repairing any damages done the house, which was not here claimed, and I was clear of that opinion. They also found no cause for finding the Magistrates *tanquam singuli* liable, and found expense due. 23d February, Altered the first part; adhered as to the second; adhered to the third, that the Magistrates were not liable; and found no proof of damages done the house. I did not vote in the first.

No. 6. 1743, June 22. MAGISTRATES OF EDINBURGH *against* CLARKSON.

THE question was, Whether summoning the Magistrates without the Council upon this act of Parliament was sufficient? The Lords found the citation null,—*renit*. Royston, Strichen, Drummore, *et me*. The Court thought that citing Magistrates in common form meant the same as citing the Burgh in common form. 10th December, Altered, six to five and President, which was six to six.

9th June.—The Court being full, the Lords altered the last interlocutor and adhered to the first, and sustained the objection that the Magistrates were not duly cited. This carried by President's casting vote.—22d June Adhered.

No. 7. 1747, June 25. URE *against* STEWART.

A QUESTION occurred, Whether the Judge Ordinary upon the act of Parliament can cast about private roads as well as highways 200 yards? I thought he could. Arniston seemed of the same opinion. The President thought it included in the act. But we had no occasion to determine it, because supposing the way a highway, the Justices exceeded the statute, and had cast it about 240 yards; and the parties made a bargain at the Bar to allow the old foot road to continue for people on foot and burials; and as the pursuer restricted his reduction and declarator to that single conclusion, we could go no farther in our judgment. Arniston thought we could not authorise any agreement to exclude the lieges, but then we could not compel the party to insist further than he pleased, and so we declared accordingly.

No. 8. 1748, July 27. BURGH OF WICK, *Supplicant*.

SET forth that their tolbooth was ruinous, and they were rebuilding it, and prayed for warrant to transport a prisoner for debt, to Dingwall, Tain, or Dornoch. The Lords refused the bill, and thought the Town was bound to furnish a prison.