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

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 exauctorated.

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. *Fountainhall, v.* 1. *p.* 667.

1752. *July* 10.

CLELAND *against* The Present MAGISTRATES of Pittenweem and Others.

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.

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 vacance, 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 burgess, 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 17.

singulis non debetur, nec quod universitas debet, singuli debent. L. 7. § 1. *quad cujusq. universit.* And as to such of them as were Magistrates in 1749, and were then charged, and are now present Magistrates, even though it should be admitted that execution could proceed against them, it could only be to compel them to make payment out of the funds of the corporation as to which they were already exonered by consigning the foresaid disposition; and if more should be necessary, they were willing to comply with what the Lords should order; and so far did they carry the argument, that even the subscribers of the bond could only be liable to execution, to the effect to compel them to make payment out of the funds of the corporation.

But to this reasoning the LORDS had no regard; and 'adhered to the Ordinary's interlocutor.'

The granters of the bond were liable by the special conception of it; and the Magistrates charged were no less so by the public law, which empowers Magistrates to bind their successors in office. *Vide Voet, ad dict. tit. quod. cujusq. universit.*; and Faber in his Code, *lib.* 4. *tit.* 7. *Def.* 5.; and so much our own act 1693 supposes. It may be true, that succeeding Magistrates, after they are out of office, cannot be charged upon such bond granted by their predecessors in office; but the charge, once given to the Magistrates in office for the time, will not fall by their going out of office.

Fol. Dic. v. 3. *p.* 141. *Kilkerran,* (COMMONTY.) *No* 3. *p.* 132.

1774. *August* 6. JAMES LIVY *against* DAVID MUDIE and Others.

No 18.

Magistrates charged to pay a sum due by bond, granted by by them in their corporate capacity, were found entitled to suspension without caution, on granting conveyance of, or security on, the town's funds; not being personally liable, except while in office, and while the funds are under their administration.

The above-named persons presented a bill of suspension of a charge of horning given them, in their respective characters of present and late Counsellors of the burgh of Arbroath, at the instance of James Livy, to make payment to him of the balance remaining due upon a bond granted by some of themselves, and others, as Magistrates and Counsellors of said burgh; which bill, they insisted, ought to be passed without caution, upon their lodging such conveyance of, or security upon the town's funds, as the Court should direct; for that, if they should submit to find caution for the sum now charged for, they would be exposed to the like distress for the whole of the town's debts, at the instance of the town's other creditors, to an immense extent, and so much beyond what they are capable to pay or give security for: And, in point of law, *argued*, It is the community itself who is the proper debtor, as it is only *virtute officii* that the Magistrates and Counsellors grant bond for the money so borrowed, binding them and their successors in office, and it is in that character the creditor transacts with them; and, how soon their offices expire, they cease to be personally liable, and the obligation transfers to their successors in office, as the representatives of the community, further than as they, and every other person, as members of that community, may be *subsidiarie* liable as so many individuals, after exhaust-