

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.

No 9. for payment of the debt, but not the proper effects of any one member. A royal burgh is a proper example, being an incorporation holding land of the King, and having consequently a power to contract debt. The present magistrates of Edinburgh are liable to a summary charge for payment of debt borrowed by their predecessors in office; the creditor may proceed to incarcerate the magistrates, as representing the town, if they postpone payment; but no creditor ever dreamed, that the provost of Edinburgh's proper estate can be adjudged for payment of any of the Town's debts.

Such is the case of incorporations who have power to contract debt. But there are many incorporations who have no such power, which is the present case. The butchers of Edinburgh have a seal of cause, and are united *ad hunc effectum* only, to bar any person from exercising that trade without paying them a composition; they may have a box, but no other common property; and they have no power to contract debt *qua* incorporation. If a man lend his money to such a society, he can have by law no action, except against the persons who receive the money; unless he can shew, that it was *in rem versum* of the society; in which case, he can claim his money out of the box. But it is absurd to think, that the office-bearers of such an incorporation can bind their successors in office, when they have no power to borrow money in name of the corporation. A man who accepts to be deacon of such an incorporation, has no reason to apprehend danger from public debt; he can never dream that an incorporation which has no power to borrow money, can be in debt.

The company of archers were incorporated by James VI. but with no power to borrow money. Suppose any one had been so foolish as to lend money to the company twenty or thirty years ago, would he not be laughed at to make a demand upon the present office-bearers of the company?

'THE LORDS passed the bill without caution, upon consigning a disposition to the effects of the incorporation.'

*Rem. Dec. v. 2. No 24. p. 38.*

1744. *January 11.*

JAMES WALKER Charger, *against* JAMES CUMMING, Deacon of the Fleshers of Edinburgh, Suspender.

No 10.

This seems to be the same case with the above.

ANNO 1715, the charger lent 100 merks Scots to the then deacon, box-master, and masters of the said incorporation of fleshers; and having charged James Cumming, the present deacon, on the bond, for payment, he offered a bill of suspension, on the following grounds; *imo*, Because, though the debt charged on may be justly due by the incorporation, yet no diligence ought to proceed against the suspender's person or effects, unless he had the incorporation's money in his hands, or refused to uplift, recover, or dispose thereof, for payment of the debt charged on, which is all that any office-bearer is bound to do, unless fraud