

1687. July 12. JOHN HAMILTON of FARM *against* The TOWN of HAMILTON.

JOHN Hamilton of Farm pursues the Town-Council of Hamilton on this ground, That Archibald Williamson, merchant in Edinburgh, had, in a subsidiary action, got a decret against him for the escape of Mr John Bailie of Carfin out of their Tolbooth, though it was by no deed of his, but by James Hamilton his conjunct bailie, as appeared by the depositions of the witnesses: and therefore he convened the Town-Council of Hamilton to pay the debt, and to relieve him, for their electing the said James, who was a known bankrupt at that time, *super hoc medio*, that, they being vested with a power of delegation, they must be answerable for their deputes, and their delinquencies, by the 6th Act Parl. 1424, and l. 11, 12. *et seq. D. ad Municipalem*. And Perezius, *ad tit. C. De Periculo Nominatorum, et quo quisque ordine conveniatur*, shows that magistrates of cities, naming their successors, *ex eâ creatione tenentur, si nominent inidoneos successores*; even as they were liable; *et litem suam faciebant*, if they accepted insufficient tutors or cautioners; *tit. Dig. de Magistrat. Conven.* And if the representatives of a Town be discussed for a debt, and are unable, then the burgesses become liable.

ANSWERED,—This was a novelty, *et noxa caput sequitur, et pœna suos tantum auctores tenet*; and the Council are *functi officio* after election; and the relief never extended further than against that colleague who malversed.

The Lords were straitened (though the action was just;) and therefore, on Castlehill's report, they refused to sustain process against the Town-Council *super eo medio* as electors, from whom the bailies derived all their power.

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1687. July 13. HADDINGTON'S TUTORS *against* WALTER RIGG, Minister at ATHELSTANFORD.

AT the Commission for Plantation of Kirks, the Earl of Haddington's Tutors pursue a reduction against Mr Walter Rigg, minister at Athelstanford, of a decret of augmentation obtained by his predecessor in 1649 and 1650, in regard Mr William Carmichael, the last minister, consented in 1674 to take the cure, but to exact no stipend out of these lands, because they paid already to the minister of Haddington.

The Lords of the Commission found that his consent was but personal, and could not prejudice the church nor the successors; and therefore decerned for the augmentation.

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