

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.