

C O M M U N I T Y.

S E C T. I.

How far a Community is bound by the Deeds of its Magistrates,
or liable for their delicts.

1681. *January 6.*

The TOWN of WIGTON *against* The TOWN of STRANRAER.

THE Magistrates of Wigton, and Magistrates of Stranraer, having, by a contract, agreed, that there being a process against the erection of Stranraer into a burgh-royal, intented at the instance of Wigton, having the sole privilege of trade, from the Water of Cree to the Irish Sea, by their charters, and the English officers having sent a party to quarter for the cess imposed on Wigton, the Provost, Bailies, and Councils of both burghs, did therefore transact, seeing Stranraer was never enrolled in Parliament, nor burdened with any assessment; therefore, 'they bound and obliged them, and their successors in office, to pay in, to the Magistrates of Wigton, the fifth part of all the assessments to be imposed upon Wigton, so long as no proportion of assessment was imposed upon themselves;' and, therefore, Wigton discharged their process against Stranraer: Whereupon Wigton having charged Stranraer for the fifth part of their supply, they suspend, and raise reduction, upon these reasons, *1mo*, That the contract bears, *to have been done by the quartering of soldiers, which was, vis major by the usurper*; *2do*, This contract is only by the Magistrates and Council, who, by their office, could not impose such a burden upon the burgh, yea though the community had concurred, because there is an act of Parliament disabling burghs to dilapidate their privileges. It was *answered* for Wigton, That albeit Magistrates cannot absolutely dispone and alienate, yet they may transact *in re dubia*; and as to the allegiance, that the contract was homologate by payment, even since the King's restoration, it is denied.

THE LORDS found, that the Magistrates and Council of Stranraer could not burden their town with this burden of assessment, either by contracting or paying, and therefore reduced the contract, and left either party to pursue their rights as they were before the contract, as accords.

Fol. Dic. v. 1. p. 157. Stair, v. 2. p. 827.

No 1.

The Magistrates of a burgh, not burdened with an assessment, as not being enrolled in Parliament, engaged to pay to the Magistrates of another burgh a proportion of the sum for which that burgh was assessed. This contract was reduced.