

1685. *March 12.* ROBERT WHITE *against* The INHABITANTS of DYSERT.

THE case of Robert White, treasurer of the Town of Dysert, against the inhabitants thereof, was reported by Saline. The question was, the second minister of Dysert's stipend is lifted by a contribution and stent: in 1663, the magistrates grant bond to Doctor Honyman, then their second minister, for some arrears of it: and being made liable, not only *ratione officii*, but personally, and seeking their relief by assessing the inhabitants;—they ALLEGED, that this stipend not being *onus reale transiens in singulares successores*, it could affect none but those who had participated of the word and sacraments at the time it was due; and that *nemo debet pro alieno debito molestari*; and that many of the present burgesses were not then inhabitants; and they were *in crassa et supina negligentia* to let it lie over 21 years.

ANSWERED,—That a community or incorporation is a *corpus collectivum et aggregatum quod nunquam moritur, sed perpetuatur per subrogationem*, as Mor-nacius speaks, *ad l. 76 D. de Judiciis*, where the words of Alphenus are very remarkable:—*Populus idem hoc tempore putatur esse qui centum ab hinc annis fuerat, etiamsi nemo ex iis nunc vivat*; for a *societas est ex eorum numero* which are spoken of in *l. 30 D. de Usurpat. quæ licet ex distantibus corporibus constant, tamen uno spiritu et vinculo juris continentur*. And Grotius, *de Jure Belli et Pac. lib. —, cap. 9*, debates, where a people change their form of government from a republic to a monarchy, *et è contra*, if they must pay the debts contracted by the former state; and resolves it *affirmative*. And Le Bret. *Plaid. 43*, states our very case, If the new inhabitants of a parish ought to defray the debt contracted by the old inhabitants before they became members; and shows it was decided *affirmative*; *nam quos sequitur commodum eos etiam sequi debet incommodum; et ipse burgus in universali suo tenemento stat*; as Craig speaks, and gives it as the cause why they fall not in non-entry.

The Lords found, this burgh-royal being a society which never dies, the present inhabitants were liable to pay this debt though contracted before their entry. *Vol. I. Page 351.*

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1685. *March 12.* WILLIAM HUME, Minister of Jedburgh *against* His PARISHIONERS.

MR William Hume, late minister at Jedburgh, against his Parishioners, was reported by Saline. The Lords found, though he served till January 1682, yet he had no right to the half-year's stipend, from Martinmas 1681 till Whitsunday 1682, because he had deserted his charge for not taking the test; and did not find that he was *in pari casu* with one who had deceased then, whose relict or nearest of kin would have claimed that half-year. *Vol. I. Page 352.*