

1758. February 21.

ROBERT AGNEW of Sheuchan *against* The MAGISTRATES and TOWN-COUNCIL of Stranraer.

## No 23.

Magistrates of a royal burgh cannot accept of a composition from any one having property within the burgh, for his share of the public taxes.

IN the year 1683, the Town of Stranraer, being one of the smallest of the royal burghs, and having little or no trade, stood rated at two shillings, as its proportion of the L. 100 Scots, which is the imaginary standard of the cess or land-tax payable by the royal burghs, and paid the taxation according to that proportion.

Andrew Agnew of Sheuchan, father to the pursuer, was at that period proprietor of some houses, and other heritable subjects, situate within the town of Stranraer; and as certain differences had then arisen, touching the proportion of the public taxation which his property within the royalty ought to bear, these were adjusted by a contract of agreement between him and the Magistrates and Town-Council, dated 27th July 1683.

By this contract, Sheuchan and his heirs were taken bound to pay the annual sum of L. 12 Scots, in full satisfaction of all taxations the Magistrates or Council of Stranraer might crave, out of the feu-duties, rents, or tenements therein particularly specified, belonging to the said Andrew Agnew. The contract, *inter alia*, contains this proviso; "Reserving liberty to the Magistrates, &c. and their successors, to augment the said Andrew Agnew, and his foresaids, in his taxation, in case the burgh be augmented as to the King's supply, by the royal burghs."

Of late years the town of Stranraer having increased above two-thirds in trade, number of houses, and inhabitants, beyond what it was in the 1683, the general convention of the burghs raised their proportion of the L. 100 from two shillings to three shillings.

The burgh being thus augmented in their quota of the general taxation, the Magistrates thereupon took occasion to increase Sheuchan's proportion of the town's taxation, for his property within the burgh, from L. 12 to L. 28 : 16s.

Sheuchan complained of this procedure as unequal and unjust, and raised a declarator against the burgh, for having it found and declared, "That he could only be assessed for his subjects, within the burgh of Stranraer, at the rate of L. 12 Scots, when the proportion of the land-tax, laid by the royal burghs upon the said burgh, is the same as at the time of entering into the contract; and with such a proportion of L. 12 Scots as any augmentation or addition laid on the burgh bears to the proportion of the land-tax to which it was liable at the time of the contract;" and *contended*, That as the town's taxation was only augmented one-third, viz. from two to three shillings; so, in terms of the foresaid contract, his property within the town might have been raised by the same proportion from L. 12 to L. 18, but no higher.

*Pleaded* for the Town; The contract 1683 was contrary to law; and being *ultra vires* of the Magistrates, was not binding upon the corporation. Magistrates are only administrators of the common good, and trustees of the rights and privileges of the burgh; and it would be a most dangerous innovation, to give them a power, at their pleasure, to alienate or dilapidate the one or the other, or, by collusion or favour, to exempt any person and his property for ever from payment of the public taxes, which are absolutely necessary for the support of the burgh, and our constitution. It would be destructive to the public, as well as pernicious to the private citizen, to permit magistrates to make perpetual compositions with particular people, and thereby overburden and oppress the rest of the inhabitants whenever the exigencies of the State should require the imposition of heavier taxes. The rule in law, and in the nature of the thing, could only be, That such assessment should be in equal proportion to the subjects and effects which are in the possession of every individual. And this is the rule prescribed by the act of convention 1667, which is uniformly observed, viz. "That the commissioners are to take course that all persons within the shires and burghs be equally and proportionally burdened." But this salutary rule would be at once destroyed, if compositions of this nature were to be admitted. And this point was expressly determined by the Court in January 1681, in a case betwixt this very burgh of Stranraer and the Town of Wigton, (*see* APPENDIX.), where the Town of Stranraer had obliged themselves, by contract, to pay the fifth part of all assessments to be imposed upon the town of Wigton; but the Court found, that the Magistrates and Council of Stranraer could not burden their town with that proportion of the Wigton assessment, either by contracting or paying it.

*Answered* for Sheuchan; The pursuer is willing to pay a rateable augmentation upon the L. 12, in proportion to the increase of the taxation upon the town from two shillings to three shillings; but that they should raise his L. 12 to L. 28 : 16s. when the Town itself is only raised one third, is manifestly unjust and oppressive. The argument for the defenders proceeds upon a false supposition, That a certain fixed rate had been ascertained by the contract 1683, as the sum that was to be paid in all time coming for Sheuchan's property within the burgh; which was by no means the case; for it was expressly provided in the contract, as above mentioned, That the L. 12 Scots, payable by Sheuchan, should be increased in proportion to any augmentation laid upon the Town; and this was no doubt extremely reasonable, on account of the frequent alterations in these public taxations, and the fluctuating condition of burghs. Individuals might be entitled to complain, were they to be overburdened, in laying on the taxation, without proper consideration being had to the property of a person who had entered into an agreement with the Magistrates and Town-Council. But nothing of that kind can justly be alleged in the present case. The pursuer has regularly paid the L. 12 for his subjects in Stranraer, for almost seventy years, without any alteration, nor has the stent of

No 23.

other proprietors suffered any alteration during all that time; and now that a higher assessment is laid upon the burgh, the pursuer contends, that, in terms of the contract, he can only be assessed, with others, in proportion to the general augmentation laid upon the Town, and not arbitrarily, without regard to that proportion. And with regard to the power of the Magistrates, like instances occur in several cases, where they may validly make such agreements. Thus they may grant charters of burgage-tenements, to be holden feu of the burgh, for payment of a trifling duty *pro omni alio onere*; whereby the burgh is liable to relieve the vassals of their proportion of the public taxation, for which the burgh is supposed to have received a valuable consideration. The same thing holds in contracts of proper wadset, and other instances of the like nature, in which it has never been doubted, that such contracts were obligatory upon the burgh.

“THE LORDS found, That the contract in the year 1683 was not binding upon the burgh.”

*Act. Hamilton-Gordon, Lockhart.*

*Alt. Dav. Dalrymple.*

G. C.

*Fol. Dic. v. 4. p. 192. Fac. Col. No 103. p. 183.*

1759. June 16.

JOHN WILSON, and other HERITORS in the City of GLASGOW, *against* The  
MAGISTRATES of GLASGOW.

No 24.

The trade of a royal borough is liable in payment of a part of the cess.

By the ancient laws and usage of Scotland, taxations for the support of government were primarily imposed upon the prelates, the barons, and the boroughs, with relief to each of them from the persons living under their respective orders. The clergy paid the one half of those taxations, the barons two thirds, and the royal boroughs one third of the other half; so that the proportion paid by the boroughs was one sixth of the total taxation. That proportion payable by the boroughs was, by the act 112th, 1587, declared to continue after the alteration made in the state of the church-lands at the Reformation.

The method of levying these taxations from the persons subject thereto, was specially directed by the acts imposing the same; and particularly, in royal boroughs, stentmasters were ordered to be named for adjusting the proportions payable by the inhabitants in respect of their trade or merchandise, as well as of their rents or landed property.

By the act of convention 1667, the new method of levying the land-tax, which had been introduced in the times of the troubles in King Charles I.'s reign, was adopted; and the same was appointed to be raised, not by the old tax-roll, but by way of supply of so many month's cess, according to the valuation made of the shires and boroughs in the year 1660. The act of conven-