

4to, It is of no moment that the members of the incorporations are charged with part of the composition payable to the royal burghs. In all the royal burghs, the whole inhabitants, whether merchants or tradesmen, are by law subjected to pay their proportion of the land-tax: But, it would surely be thought a very extraordinary plea, if, on this account, the craftsmen of a royal burgh should pretend to the privilege of carrying on trade or merchandise within it. In the town of Kilmarnock, not only the members of the five incorporations, but the whole other inhabitants, contribute to this composition; so that, if those are, on that account, entitled to carry on merchandise, so are these.

'THE LORDS assoilzied from the reduction.'

Act. Lockhart. Alt. Advocatus. Clerk, Pringle.
Wight. Fol. Dic. v. 3. p. 98. Fac. Col. No 54. p. 131.

1793. January 17.

The MAGISTRATES and TOWN-COUNCIL of PAISLEY, against The FREEHOLDERS and COMMISSIONERS of SUPPLY of the County of Renfrew.

PAISLEY is a burgh of barony, formerly holding of the Abbey of Paisley, and now of the Crown. It has kept up for many years a very secure jail, in which, owing to the insufficiency of the county prison in the royal burgh of Renfrew, most of the prisoners for crimes committed within the shire have been confined.

A difference of opinion having taken place between the magistrates and the freeholders of the county, respecting the burden of maintaining these prisoners, the magistrates brought two actions against the freeholders, commissioners of supply, and the collector of the rogue-money; the one concluding for certain sums expended by them, in maintaining prisoners for crimes committed within the county, exclusive of the town; and the other for sums expended in supporting prisoners for crimes committed within Paisley.

The freeholders seem not to have opposed the former, but they disputed the justice of the latter claim; and, in its support, the pursuers

Pleaded: Royal burghs alone are by law obliged to have jails. Paisley being merely a burgh of barony, is therefore not bound to have a prison at all. Mackenzie's Observations on the Act 1597, c. 277; Stair, b. 4. tit. 47. § 19.; M'Dowall, b. 1. tit. 10. § 197. Erskine, b. 4. tit. 3. § 13.; Dictionary of Decisions, *voce* PRISONER. If it had none, the whole criminals in the county, without distinction, would be sent to the jail of Renfrew, and there maintained out of the rogue-money, of which Paisley pays its proportion. It would be unjust, that by the voluntary act of upholding a prison, the magistrates should be loaded with the expence of maintaining any part of the prisoners; more particularly, as by doing so, they render themselves responsible for the escape of prisoners for debt, which of itself is a very considerable hardship. The statutes upon

No 7.

No 8.

A burgh of barony, having a sufficient jail, is bound to maintain prisoners in it, for crimes committed within the burgh, out of its own funds; but is entitled to relief from the rogue-money, for the maintenance of persons confined in it for crimes committed in the other parts of the county.

No 8. this subject lay the burden of maintaining criminals upon the district where they are found, without distinguishing where, or by what judge, they are apprehended; 1579, c. 74.; 1617, c. 8. § 16. and 17.; 11th Geo. II. c. 20.; Erskine, b. 1. tit. 4. § 17.

Answered: The magistrates have been in the immemorial practice of maintaining, out of their own funds, all the prisoners for crimes committed within the burgh; and this, it is believed, is the practice of every burgh in the kingdom. Indeed they are bound to do so from the very nature of their tenure. Watching and warding are the *reddenda* by which they hold their rights, and they are thereby bound not only to secure the peace of the lieges, by apprehending those who offend against it, but by detaining them in custody, till they are liberated in due course of law.

The act 1597, c. 277. puts all burghs, as to the point at issue, in the same situation. The statutes referred to by the pursuers, so far as they have any connection with the present subject, seem to relate to counties or districts, in contradistinction to the towns contained in them. At any rate, nothing less than an express enactment of the legislature could load the landed interest with, and free the burghs from, a burden which was the onerous cause of their erection.

Besides, Paisley, although a burgh of barony, holds of the Crown, and is on an equal footing with a royal burgh, in the enjoyment of every privilege except that of a share in the Parliamentary representation. It is also a large and opulent town, well able to support its own prisoners.

THE LORD ORDINARY reported the cause on informations.

Some of the Judges were of opinion, that the county should maintain the whole criminals, because Paisley was only a burgh of barony. The Court, however, influenced a good deal by the practice in this case, found, That 'the pursuers are bound, out of the town's funds, to maintain all criminals incarcerated in their prison, for crimes committed within the town; but that they are entitled to be refunded, out of the rogue-money of the county, of the expence of maintaining in their prison all criminals imprisoned therein, for crimes committed within any other part of the county*.'

Lord Reporter, *Dreghorn*. Act, *Cullen et alii*. Alt. *Wight, G. Fergusson*. Clerk, *Home*.
Fol. Dic. v. 3. p. 98. Fac. Col. No 13. p. 28.

* In this question, the pursuers were at some pains in making inquiries with respect to the usage in other burghs of barony. From these, it appeared, that the practice had not been uniform, nor settled on any general system.

** See Sheriff-clerk of Renfrewshire against Magistrates of Greenock,
voce JURISDICTION.

Begbie and Gibson against Brown, *IBIDEM.*

Couper against Kinnothy, *voce BURGH ROYAL.*

Polmais against Stirling, *IBIDEM.*

JURISDICTION.—COMMUNITY.