

APPENDIX.

PART I.

TITLE TO PURSUE.

1800. *June 25.*

ARCHIBALD JOHNSTON and Others, *against* The STENTMASTERS of KELSO.

KELSO is a burgh of barony, held under the Duke of Roxburghe, whose baron-bailie acts as chief magistrate, and annually chooses certain stentmasters, who, under his controul, fix the causes of assessment on the inhabitants for the current year, and the sum payable by each.

Archibald Johnston, one of the inhabitants, being dissatisfied with the conduct of the stentmasters, both as to some of the grounds of assessment, and the proportion laid upon himself, brought an action against their preses and treasurer, before the Sheriff, calling for production and examination of their accounts.

The defenders objected to his title to insist in the action.

The Sheriff 'found the defenders liable to account for their intromissions*.' But their accounts having been produced, he afterwards, on the merits, assoilzied the defenders.

Johnston raised an advocation and declarator, in which he complained of certain grounds of assessment, imposed by the stentmasters.

The bill of advocation and summons of declarator were in his own name alone, but the papers in the cause were presented in name of himself and others, inhabitants of Kelso.

* On a former occasion, Johnston had raised an action before the Sheriff, against the Merchant Company of the burgh, to account for the application of certain poors' funds under their management. The Sheriff sustained an objection to the title of the pursuer, but on appeal to the circuit court, Lord Pitfour (Sept. 24. 1773,) reversed that judgment, and remitted to the Sheriff, 'with this instruction, That he ordain the respondents to produce the books and accounts of the Merchant Company of Kelso, and upon the production thereof, to proceed in the cause, and determine therein agreeable to law and justice.'

No. 1.

Each inhabitant of a burgh of barony has right to investigate the accounts of the stent-masters.

No. 1. The defenders again objected to the title to insist in the action; (which, they alleged, Johnston had authority from no other inhabitant to maintain); that they were liable to account only to the baron-bailie, and were not obliged to answer to a popular action of this nature; Dict. *voce* TITLE TO PURSUE; 23d June 1782, Cowan against the Magistrates of Wigston, No. 86. p. 16133. They at the same time justified their accounts on the merits.

The pursuers contended, That every burghess had both an interest and a title to investigate the grounds of taxation and amount leviabie against himself; Dict. *voce* TITLE TO PURSUE; 30th June 1752, Anderson against Magistrates of Renfrew, No. 74. p. 16122; 9th August 1765, Merchant Company and Trades of Edinburgh against the Magistrates, No. 79. p. 16124. See also Dict. *voce* COMMUNITY.

The Lord Ordinary conjoined the two actions, and assolizied the defenders.

Upon advising a petition, with answers, the Court considered the pursuer's title sufficient; but there was the less reason to investigate this minutely, as the defenders were thought clearly right of the merits.

The Lords 'adhered.'

Lord Ordinary, *Meadowbank.*
Clerk, *Minnies.*

Act. R. H. Cay.

Alt. *Monyhenny.*

D. D.

Fac. Coll. No. 187. p. 426.