

## S E C T. III.

## Powers of Magistrates in the Administration of the Common Good.

1685: *March 3.*PROVOST and MAGISTRATES of Glasgow, *against* JOHN BARNES, late PROVOST there.

In a pursuit at the instance of the Magistrates of Glasgow, against John Barnes their late Provost, for payment of L. 1700 he was owing to the town *per bond*.

*Alleged* for the defender, *1mo*, He is discharged of the said bond by an act of Council, and *par in parem non habet imperium*; *2do*, The discharge was granted for the onerous cause of good services done to the town; and it is ordinary to gratify the good services of Magistrates.

*Answered*, Magistrates are but administrators of the town's common good, and cannot, more than curators, gift away any part on't gratuitously; and if there be any such custom, it is but *vetustas erroris*.

THE LORDS decerned against the Provost.

*Fol. Dic. v. 1. p. 157. Harsarse, (MAGISTRATES.) No 683. p. 193.*

No 20.  
Magistrates cannot alienate the common good gratuitously.

1748. *November 28.*JOHN LANG, and Other Burgesses of Selkirk, *against* The MAGISTRATES.

JOHN LANG, deacon of the taylors of Selkirk, and other craftsmen, who, with Thomas Elliot, late Bailie there, amounted in all to the number of 18 persons, brought a process against the Magistrates and Town Council of Selkirk, challenging them for embezzlement and misapplication of the town's revenues; and concluding, that they should be decerned to repay the sums therein mentioned to the treasurer for the time being. The defenders, without entering into the merits of the cause, insisted upon the following preliminary objections, That the pursuers had neither title nor interest to carry on this process. These objections being reported to the Court, process was sustained and the objections repelled. Upon a reclaiming petition for the defenders, the objections were sustained. The pursuers having next reclaimed, process was sustained and the objections repelled. It lay upon the defenders now to reclaim, which was done by an elaborate petition, containing the following arguments.

In order to set the objections in their proper light, the defenders found it necessary to premise a short view of the constitution of royal burghs. The constitution of a royal burgh among the different nations presently in Europe, is borrowed from the Romans; or rather, the constitution of such cities or burghs

No 21.  
The administration of the common good of burghs was formerly under the inspection of the Chamberlain of Scotland; now of the Exchequer. Burgesses are competent witnesses for the town, in questions concerning the town's property. Is action competent to private burgesses against the Magistrates for malversation?