

1759. June 15.

WILSON and Others, *against* The MAGISTRATES of GLASGOW.

## No 43.

Not only houses and lands, but likewise burgesses, in respect of their trade and manufactures, are liable to pay stent.

History of stent.

ABOUT the time of the Revolution, the land-tax paid by the city of Glasgow was levied in the following manner: When this tax was eight months cess, there was exacted of it from the proprietors of houses 10 per cent. of the gross rent payable to them, which commonly amounted to about one half of the land-tax, and the remainder was paid by the merchants. But this 10 per cent. of the gross rent being fixed upon the land-holders as the constant rule, came by enlargement of the town, to be sufficient for the whole land-tax; and by this means it came, that for many years the traders were relieved from paying any proportion of the land-tax.

John Wilson, and other heritors in the city of Glasgow, brought a process of declarator against the magistrates, concluding, ' That the practice of laying the whole land-tax upon the landed interest, is illegal and oppressive; and therefore, that the traders should be stented in two-third parts of the land-tax; because the profit of the trade of Glasgow is much more than double the rent of the houses.' The defence was, That the Convention of royal burghs, has by law power to divide the whole quota of cess payable by the burghs, upon each respective burgh according to their discretion; and that the magistrates of each burgh have power, according to their discretion, to stent and proportion the cess upon their inhabitants; that such discretionary powers cannot be challenged before the Court of Session, upon the footing merely of inequality, which would be denying the magistrates to have discretionary powers; and therefore that this declarator cannot be sustained, unless it could be made out that the proceedings of the magistrates were partial and unjust, of which there is not the least appearance in the present case.

' Found, That not only the houses and lands, but likewise the burgesses, in respect of their trade and manufactures are liable in payment of the cess; and that the magistrates and their stent-masters ought to rate the same upon the heritors and burgesses accordingly.'

The magistrates, during the process, apprehending the cause would go against them, altered their measures so far as to direct the stent-masters appointed for levying the cess *anno* 1758, to lay 1-4th upon the trade, and 3-4ths upon the houses. But the land-holders considering this as still an unequal allocation, applied to the Court, after obtaining the foregoing interlocutor, praying that the proportion to be paid by each should be ascertained. But it was found, ' That it is neither necessary nor proper for the Court to give more particular directions to the magistrates of Glasgow for proportioning the cess betwixt the heritors and other burgesses, than what is contained in their interlocutor.' And here it must be remarked, that admitting a power in the magistrates to allocate the cess upon these two classes, which was but faintly controverted, the interlo-

utor appears to be right ; for, upon that supposition, it did not appear rational to deprive the magistrates altogether of a discretionary power, and to substitute in its place a rate strictly proportional.

But the pursuers, unwilling to be left thus at an uncertainty, applied again to the Court, praying that the magistrates should be obliged to set forth by what proportion they meant to impose the cess of the ensuing year ; in order that the Court might judge whether the proportion to be named by them was, or was not, agreeable to the first interlocutor. And they urged that this step was necessary, because if they were left to a complaint after the cess was imposed, they would always come too late, for the cess would be levied before the complaint could be brought to a final conclusion. But the Court, probably judging this application to be no better than an indirect way of evading the last interlocutor, refused to oblige the magistrates to speak out their intentions, leaving them as formerly to their discretionary powers.

As it appears to me, the foregoing judgments of the Court are built upon an erroneous foundation. The pursuers did not take up their ground properly, but yielded a point that they ought not to have yielded; viz. That the magistrates have a power to levy the cess, by allocating so much upon one class, and so much upon another. It was this concession that misled the Court, as may appear from what follows.

I premise the history of stent-masters, who at first were appointed to be chosen by the whole inhabitants of the burgh ; see act 281, Parl. 1597. Afterward by act 2, Parl. 1633, they were chosen by the town council. And lastly, by the act of Convention 1667, they were chosen by the magistrates. And the like appointment is renewed in the act of Convention 1678, as well as in all the following cess acts.

The stent-masters being thus elected, their duty is laid down in the said act 281, Parl. 1597; viz. to stent the inhabitants of the burgh; or, 'to set the stent upon the burgesses and inhabitants, and to make a stent-roll thereupon as effectual,' as more clearly expressed in the act of Convention 1665. And the rule laid down in the said act for stenting is, 'That every person within burgh shall be stented and taxed according to the avail and quantity of his rent, living, goods and gear which he hath within burgh.' By the first is meant the rent of houses, by the second the profit of trade or of a calling, and the last explains itself.

Thus it appears in general, that from the beginning the method of levying the cess within burgh, has been to tax individuals, and not classes or societies. Upon this the following question naturally occurs, What is it that entitles the magistrates of Glasgow to allocate the land-tax, whether equally or unequally, upon houses and upon trade? They have no such power by law. The commissioners for a shire have surely as extensive powers as the magistrates have *qua* commissioners of a burgh. Yet the former never pretended to assume the power to split the cess betwixt the nobility and gentry, nor to allocate so much of it

No 43. upon each particular parish. If the magistrates of a burgh can, by their own arbitrary will, without having any rule, divide the cess betwixt the proprietors of houses and those who live by commerce, they may subdivide it betwixt the manufacturers and traders, or order it to be laid on by quarters of the town. In a word, the magistrates cannot give any lawful instruction to the stent-master, other than to make a stent-roll valuing the rents, living, and goods and gear of each individual. Had the matter been set before the Court in this light, it would have left no room for any pretext of discretionary powers in the magistrates. They have not by law any discretionary power other than what relates to the choice of the stent-masters.

There was a reclaiming petition against the foregoing interlocutors, to which answers were given in ; and, in the replies, the foregoing reasoning was stated. But it came too late. The majority of the Court had taken a bias from the case as first stated to them ; and accordingly the interlocutors were affirmed.

*Sel. Dec. No 154. p. 210.*

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S E C T. V.

The Privileges of Burghs and Burgesses.—Monopolies.

TOWN OF ABERDEEN *against* LITSTERS.

No 44.

IT was found that a person could not both use merchandise and be a litster.

*Kerse, MS. (BURGH.) fol. 17.*

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LORD of NEWHALL *against* TOWN of CURRELS.

No 45.

THE LORDS found that no burgess could pack or peel within the liberties of the town of Currels without their own licence.

*Kerse, MS. (BURGH.) fol. 17.*

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1518. *November 16.* TOWN of EDINBURGH *against* LEITH.

No 46.  
Rights of the  
burgh of  
Edinburgh  
over Leith.

THE Town of Edinburgh obtained decret against the inhabitants of Leith, decerning them to desist from all buying of wool, hides, skin, cloth, and all merchandise, in the country from unfreemen, and that all such merchandise be brought to Edinburgh, and their coft from the burgesses ; and in like manner to desist from all packing and peeling, within Leith, but within Edinburgh, and to pay their customers in Edinburgh for the same ; and also decerning the hail inha-