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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-

tion declares, "That all persons having real estates of lands, teinds, annual-rents, due by infestment, feu-duties, tack-duties, and others of that nature, are and shall be liable for the foresaid supply." Certain commissioners for the shires, and the magistrates of the boroughs for the time, are appointed to settle the proportions, and collect the cess within their bounds, with power to appoint stentmasters for assisting them in so doing. Further, these commissioners are thereby impowered to assess the inhabitants within the counties and boroughs at certain rates, for a proportional relief of the supply of that year 1667; "in respect that the land and real rent of the kingdom is liable for this supply, and that the said land-rent is under many other great burdens."

This act 1667 has been referred to in subsequent acts imposing supplies; but the relief thereby given to the landed interest is not repeated in them.

By the 12th act of the Parliament 1690, the exclusive privilege of foreign trade, import and export, is of new granted to the royal boroughs, in consideration of the boroughs being "one of the states of this kingdom, bearing a sixth part of all public impositions," &c.

The Magistrates of Glasgow, some time after the Revolution, laid down a rule for levying the cess within that city; which was, that the lands and houses in it should pay  $2\frac{1}{2}$  per cent. of the rents for every two months cess that should be imposed, and that the traders and inhabitants should pay according as they should be rated by the stentmasters.

At that period, and for some time after, the  $2\frac{1}{2}$  per cent. of the rents, for two months cess, did not pay the whole cess, and the remainder was levied from the traders and inhabitants; but, for two or three years last past, by the increase of buildings, and rise of rents, that proportion for the landed interest, which was still levied according to the rent for the time, paid the whole supply; so that no part of the cess fell upon the trade of the city.

John Wilson, and others, heritors within the city, thereupon brought a process against the Magistrates, concluding, *1mo*, To have it found, That the laying the whole cess upon the landed interest, and nothing upon the trade, is illegal and oppressive; and that the traders should be stented in two thirds of the cess; *2do*, That the Magistrates should pay back to them L. 2135 : 7 : 4 Sterling, as two thirds of the stent imposed upon the heritors for the three years last past; or, at least, that the whole stent for three years to come should be laid on the trade; And, *3tio*, That the Magistrates should be ordained to pay back to the pursuers, what has been levied by them more than the whole quota of cess payable by the borough, and charges of collecting in these years.

*Pleaded* for the defenders, in answer to the *first* conclusion of the libel, *1mo*, As the legislature has intrusted the Magistrates of boroughs with imposing and levying the cess thence payable, the weakening their hands or shaking their powers would be attended with very bad effects. *2do*, There has been no innovation attempted by the Magistrates, who have followed the rule laid down by their predecessors, sanctioned by the cheerful acquiescence of all par-

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ties concerned for above half a century. When this rate upon the landed interest did not pay the whole cess, they were not burdened with more; and although, by the increase of rents, the whole cess is now paid by the landed interest, yet no landlord is poorer by this than he was formerly, but, on the contrary, is richer in proportion to the increase of his rent. And, indeed, though the cess is thus nominally paid by the landholders, yet it is in reality paid by the traders, who possess the houses in the town. And, *3tio*, Although the old taxations were laid partly on trade, yet by the act of convention 1667, the former practice was innovated, and a new method established, imposing the land-tax by way of supply from lands and real estates, and not from personal estates or trade; which new method has been followed ever since, with this variation, that the temporary relief given to the landed interest for the year 1667, from the inhabitants and traders, has never since been renewed, so that the burden has been left entirely upon the real estates within counties and boroughs.

*Answered* for the pursuers, *1mo*, Though the convention of boroughs have the sole power of rating each borough with its proportion of cess, yet the Magistrates of the particular boroughs are only intitled to name stentmasters for distributing the proportion laid on the borough among the inhabitants; and anciently, the inhabitants had the naming of their own stentmasters; but if any unequal distribution is made by such stentmasters, relief must certainly be had from the Supreme Court. *2do*, No length of practice can establish an unjust distribution of this kind. It is the continuance of that practice which the pursuers complain of, seeing, by the alteration of circumstances, that rate which was originally just, has become the contrary, so that the heritors now pay the whole cess, instead of the half as at first. The rise of rents has been occasioned by buildings and improvements, which are now more expensive than formerly; and the trade of this city has increased by the proportion of at least ten to one more than the landed in the same period. And, *3tio*, The act of convention 1667 did not make any alteration as to the interests of the persons formerly liable in taxation within borough. Later acts of Parliament, particularly the 12th act 1690, suppose that trade is liable in a part of the cess; and such has been the general sense of the nation ever since, as appears by the known practice of all boroughs where there is any trade, of rating the cess between it and the landed interest.

As to the other branches of the libel, the defenders *contended*, That no rule could be fixed for ascertaining the rate payable by the traders, without making every trader discover the circumstances of his trade, which would be highly dangerous; and therefore it must be discretionary in the Magistrates and their stentmasters, to settle that proportion: That the cess already levied had been applied for the service of government, and therefore could not be recovered; and they denied, that more had in any year been levied than paid the full cess, and charges of collecting.

*Observed* on the Bench; The old taxation was laid on the boroughs in respect of their trade and privileges, and the cess is now imposed upon them on the same account; and hence, when a borough of regality gets a communication of privileges from the Royal Boroughs, it becomes bound to relieve them of part of the cess. There is no prescription here from the practice, as the cess is annually imposed.

“ THE LORDS found, That the heritors of lands, houses, and other heritable subjects within the city of Glasgow, so the other burgesses, in respect of their trade and manufactures within the same, are liable in the payment of the cess imposed by act of Parliament upon the city of Glasgow; and that the Magistrates of Glasgow, the commissioners for ordering, raising, and levying the said cess, and the stentmasters appointed by them, ought to rate the same upon the heritors and other burgesses accordingly; and remit to the Lord Ordinary to proceed on the cause.”

*N. B.* The pursuers having afterwards insisted, that the Magistrates should specify the proportion in which they proposed to lay the cess of the current year upon the trade and the landed interest, the Magistrates declined to do so; and that point being reported 8th August 1759,

“ THE LORDS found it not necessary to give more particular directions as to the proportion of the cess between the trade and the landed interest, than what are contained in the (above) interlocutor of the 16th June.”

Thereafter, the Magistrates having proportioned the cess for the year 1759, by laying three fourths on the houses, and one fourth on the trade, the pursuers complained, that this proportion was unequal and unjust, *alleging*, That the stock in trade of the inhabitants of Glasgow was much more than double the value of the houses, and therefore insisted, That the LORDS should rectify the said proportion, by laying two thirds on the trade, and one third on the houses. To which it was *answered*, That the Magistrates, before appointing stentmasters, and fixing rules for levying the cess for the year 1759, had inquired particularly into the state of trade in that city, and had taken the advice of the most considerable inhabitants, both landholders and traders, as to the proportion which should be laid on the trade for that year; the result of which was, that the Council had come to an unanimous resolution of laying no more than one fourth upon the trade for the year 1759. The Magistrates and Council are the best judges of the circumstances of their borough, and in what proportion the cess ought to be paid by the landholders and traders; and the Legislature has given them full power to determine in that matter; neither can it be fixed by any certain rule, for the traders of such a town as Glasgow can better afford to pay the half of the cess in one year, than the fourth of it in another.

This point being reported on the 6th February 1760, it was *observed* on the Bench, That though some part of the cess must be paid by the trade, the precise proportion was not fixed by any statute. This must be left to the discre-

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“THE LORDS refused to give relief, and adhered to their former interlocutors.”

Reporter, *Kames.* Act. *Lockhart, Ferguson.* Alt. *Miller, And. Pringle.* Clerk, *Gibson.*  
D. R. Fol. *Dic. v. 4. p. 193.* Fac. *Col. No 185. p. 329.*

\* \* Lord Kames's report of this case is No 43. p. 1900, *voce* BURGH ROYAL.

1789. February 6.

EARL OF WEMYSS, and Others, Inhabitants of Canongate, *against* The  
MAGISTRATES OF CANONGATE.

No 25.

Burgesses or traders, and not private inhabitants of towns, liable to the burden of the local quartering of soldiers.—But this has since been altered.

THE Magistrates of Canongate, in 1786, passed a sentence, “finding, That the inhabitants of that borough were all indiscriminately liable to the charge of the local quartering of soldiers; and ordering accordingly, that they should be quartered on the whole inhabitants without distinction;” whereas formerly the burgesses and traders only had been subjected to that burden. For about two years the imposition was so far submitted to, that the other inhabitants paid a tax by way of commutation for it. At length a suspension of the Magistrates' order was obtained by them, and an action of declarator of exemption instituted, in which evidence was produced, that the usage of every considerable town in Scotland, where soldiers were locally quartered, had always been to billet them on burgesses exclusively of the rest of the inhabitants. The pursuers

*Pleaded;* Those only are liable to the charge of thus quartering soldiers, who are bound to perform the service of watching and warding within burgh. This description applies to burgesses alone, who, when they submit to the former inconvenience in favour of those who relieve them from the latter, should not repine at paying so small a price for so great a benefit.

The common law protects every man in the sacred retirement of his own house, which is never to be violated by the intrusion of any class of people. Nor is the imposition in question warranted by the statute-law. The quartering of soldiers is for the first time mentioned in the act of convention of 1667. In order to guard against the abuses which might thence arise, several posterior acts of Parliament were framed, viz. 1681, c. 3.; 1690, c. 6.; 1693, c. 4.; 1695, c. 33.; 1696, c. 23.; and, in particular, by the statute of 1698, c. 9, it was enacted, “That in time of peace within the kingdom, soldiers, in their local quarters, should only be quartered by those to whom the direction thereof appertains, in boroughs royal or of regality, or the most capable market towns within the shires where their quartering should be ordered, and that they should not be quartered upon tenants in dispersed onsteads in the country, upon pretence either of stubble-quarters, or of any other cause whatsoever.” But as in none of these acts of Parliament is the burden laid on the occasional