

No 2. 1681. *January 27.* JACK *against* TOWN of STIRLING.

THE common good of burghs royal must be let yearly by public roup.

*Fol. Dic. v. 1. p. 157.*

\* \* \* *See* The particulars of this case, No 3. p. 1838.

1685. *November 24.*

THE ARCHBISHOP of ST ANDREWS *against* THE MAGISTRATES of GLASGOW.

No 3.  
A burgh attempted reduction of a deed of their Magistrates, alleging a burgh was on the footing of a minor. This found irrelevant, but action reserved against the Magistrates.

THE Archbishop of St Andrews having charged the Magistrates of Glasgow, upon a bond of 20,000 merks, granted to him when he was Archbishop of Glasgow, by their predecessors Magistrates; they suspended, upon these reasons, *1mo*, It was acknowledged that the bond was granted for a tack of the teinds of Glasgow; and the town being minors, they ought to be reponed, in so far as they were prejudged and leased by the deed of the Magistrates; and that, true it was, they were prejudged by the granting of this bond, because the teinds set were not of an adequate value to the sum contained in the bond; *2do*, That the tack was no sufficient security, it being set by the bishop, by way of anticipation, before the expiring of the old tack: As also, that the entry of the tack was *collatum in indebitum tempus*, viz. at Michaelmas 1684; whereas the present bishop's *conge de Eslire* came down before that time, so that the charger was no more bishop there. It was *answered* for the bishop, That there was no lesion in the tack, being of a far greater value than the sum in the bond. But, *2do*, It was not relevant, the transaction being betwixt him and the Magistrates, who were *majores & scientes*, and denied that the town was in the case of minors. And, *3tio*, That the nullities of the tack were not competent to be proponed by the Magistrates, there being no eviction or distress, and that they could not quarrel their own right.—THE LORDS repelled the first reason, reserving action to them against the Magistrates for the time; they repelled likewise the second reason, the tack not being yet quarrelled nor reduced: And also, in regard they would not allow them to quarrel their own tack.

*Fol. Dic. v. 1. p. 156. Pres. Falconer, No 104. p. 73.*

1690. *February 1.*

THE MAGISTRATES of EDINBURGH *against* JOHN PATERSON.

No 4.  
Magistrates had granted a tack for two 19 years.

ARBRUCHELL reported the Magistrates of Edinburgh against John Paterson, for reduction of a feu, granted to him by the Town in 1684, of a piece of

ground in the links of Leith, whereon he has built sundry houses, and pays five merks of yearly feu-duty, besides stent and excise; as also, for reduction of a tack then set to him, of Leith links, for two 19 years, for 300 merks by year. The reasons of reduction were, *1mo*, The tack is *ipso jure* null, for it wants the act of Council, its warrant. *2do*, By the 36th act of Parliament 1491, the royal burghs may not set tacks longer than three years of any part of their common good, or town rents, without they be ratified and approven by the convention of burghs. *3tio*, It is set with evident lesion, for the links are worth 900 merks yearly; and, at a roup, Archibald Johnston bade 550 merks for them, and yet Paterson, the defender, has them for 300. *Answered* to the *1st*, The warrant is standing in the town's books, and by a diligence he will recover it from their clerk. To the *2d*, The act of Parliament is in desuetude; and though acts of convention are produced, ratifying such tacks, yet they are ancient and of an old date, and every day the Town Council of Edinburgh are setting tacks for longer space than three years, as the shops about St Giles's church, the burgh-loch, &c. To the *3d*, Johnston's offer was but *in emulationem*, and when he was put to it he resiled; so it was just the defender should have the benefit of the first tack, especially seeing, at the ish of the tack, the town were to have the houses he had built; and if they were not satisfied, he was content to renounce, on their refunding his expenses and meliorations. *Replied*, A two 19 years tack was *species alienationis*, which should not be allowed to administrators, who are but as tutors and curators to the burgh; and *esto* Johnston resiled from his offer, it was a malversation in the Magistrates to set it cheaper than the roup. Some of the Lords were for trying the value of the links before answer, that if there was a great disproportion between his tack-duty, and what it might really give at that time, the Lords might cognosce if there was lesion. But the plurality repelled the reasons of reduction, and sustained both the feu and tack.

THE LORDS afterwards allowed the value of the links to be tried before answer, and the custom of the convention of burghs ratifying tacks.

*Fol. Dic. v. 1. p. 156. Fountainball, v. 1. p. 818.*

1700. July 23.

MONCRIEF of Colfairgie *against* TOWN of Abernethy.

MR MATTHEW MONCRIEF of Colfairgie pursues George Balvaird of Ballomill, and the Inhabitants of the town of Abernethy, for abstracted multures. *Alleged*, By the charter of erection from the Earl of Angus in 1476, they are liable to no astriction nor thirlage, neither is this the mill of the barony. *Answered*, By a posterior charter in 1628, the whole burgesses are expressly thirled to the mill

VOL. VI.

14 Q

No 4.

This was contrary to act 36th Parl. 1491. But there had been a practice of obtaining the consent of the Convention of Burghs to such tacks, which it was said validated them. The Court, in a reduction, allowed, before answer, a proof of the custom. The pursuer had likewise alleged, that the subject was let at an under-value. A proof of the value was ordered.

No 5.

Found, that acceptance, by the Magistrates of a burgh, of a charter, containing thirlage to a