

1695. *November 21.*The MAGISTRATES of GLASGOW *against* The WRITERS.

THE Town Council of Glasgow, for making up the King's cess imposed by the Parliament, having laid a proportion of the same upon the writers living by that employment within their burgh ; they presented a bill of suspension before my Lord Whitelaw, pretending it was a mere innovation : And he having reported the debate on the reasons, the writers founded on the 115th act 1592, anent the taxation of burghs, determining none to be liable to cess within burghs but only such who exercised traffick, merchandise, or change within the same, under none of which classes writers fell, they being a liberal employment, and a part of the College of Justice.—The magistrates *alleged* for them a posterior act, viz. 279th Parl. 1597 ; which, though in the Rubrick it seems to relate only to the poor and watching within burgh, yet by the statutory part extends to all residents within burghs who may spend a hundred pounds by year, or are valued to be worth 2000 merks of stock.—THE LORDS were clear that writers were liable for any real estates they possessed within burgh, as landlords of tenements ; as also, that they could plead no exemption as writers exercising a liberal calling, or *qua* members of the College of Justice, (whereof as they were no part, so these members had no such privilege granted now,) but in so far as they were craved to be made liable as inhabitants possessing personal estates, the Lords being unclear how far this might go, resolved to hear it argued in presence, because of the generality of the preparative, seeing all the writers in the hail royal burghs of the kingdom would plead the same immunity, though many of them possessed great estates in money, which ought to bear some proportionable burden with the rest, (though they alleged they paid both retention and the poll on account of these personal estates) ; and, on the other hand, if they tax writers *qua* inhabitants and possessors of such moveable estates, then, by the same rule, why not gentlemen, who, for the education of their children, reside in burghs ? But if they have estates in landward, they are secured against double taxation by the 279th act 1597. But the difficulty recurs, if his estate consist only in money ; for some thought there was no reason that one who had 100,000 merks should go altogether free ; and his being liable to retention came not to the King's use, and his poll was no adequate cess with what is paid for land-rent ; neither were these so constantly imposed as land-cess.

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Persons, with-
in burgh, of
descriptions
not falling
under the
terms, *traffic*,
merchandise,
or *change*,
found not
liable to stent.

December 13. 1695.

THE LORDS decided the cause of the Magistrates of Glasgow against their Writers (mentioned 21st November 1695,) after a hearing in presence ; and found none of the acts of Parliament founded upon could reach the writers ; neither under the words of traffic, merchandise, and change, in the first act there cited, nor of rents and holdings within burghs in the second act ; and that *consuetudo* being *optima legum interpret*, none of the royal burghs had ever

No 40.

stented them till now; which sufficiently instructed these acts were not designed to comprehend them, and so were never *in viridi observantia*, but in desuetude *quoad* them, though they had expressed them, as they did not. But in regard the town alleged, that the writers' apprentices, *ipso facto*, by serving their apprenticeships, became burgesses of Glasgow, and got their freedom under that reduplication, as having served writers: THE LORDS thought this might be a ground whereon to make them liable; but, without a present determination of the relevancy, allowed a probation of the custom, before answer; and did not find it sufficient that some of them were made burgesses, unless it were proven that they got it as a right due to them by the production of the discharge of their indentures; and that by the constitution of the burgh, the Magistrates and Dean of Guild could not refuse them, who had served their apprenticeships to writers.

Fol. Dic. v. 1. p. 118. Fountainball, v. 1. p. 679. & 688.

1696. November 24.

TOWN of EDINBURGH against ALEXANDER BIGGAR.

No 41.

A burgh *feued* out a piece of ground, not within the town, but contained in their charter, being part of the side of a high road leading into the town. The feuer found not liable for the burgh prestations of watching, warding, &c.

IN the mutual declarators betwixt the Town of Edinburgh and Alexander Biggar, brewer, and heritor of the houses called Gairnshall, beyond the Windmill, and built in that mire commonly called the Goosedub; the town craved he might be found liable to all the burghal prestations, as lying within the royalty, such as watching and warding with the neighbours, quartering, assessment, militia, thirlage, &c. Biggar had a declarator of immunity, on this reason, that John Gairns, his author, had got a feu-charter of this ground, from the town, bearing a *reddendo* of 10 merks of feu-duty *pro omni alio onere*, which must free him from watching, warding, out-reeking militia or trained-bands; paying of local, transient, or dry-quarters, within the burgh of Edinburgh or Cannongate; and from all astriction to their mills, or imposition due to them on malt, or any impositions laid on by their authority; and that he is no farther liable to the town but for the yearly feu-duty foresaid.—*Answered* for the town, That the ground whereon these houses stood, was clearly, by their great charter in 1636, a part of the royalty of the burgh, and annexed to the same, and their right bears the *vias et passagia* leading to the said burgh; and where they are too broad, they feu the ground on the sides of their causeways, for melioration and decorement; and its being given in feu, does not hinder its being burghage; for so Thomas Robertson's land in the Meal-market, and the Society, are feus; and yet are liable in watching, warding, and all other burghal prestations.—*Replied*, Though the Magistrates held the town *in burgagio* of the King, so he was the town's superior, and not the Magistrates; yet, where they feu ground without the ports of the burgh, to be holden feu, that cannot be reputed burghage; and the highways and passages given them by their charter, convey no right of