

As, therefore, magistrates have been supported in granting tacks, and even feus, where they appeared to be beneficial to the burgh, it follows that the alienation of a superiority must be equally effectual; and no example can be pointed out where the contrary was decided.

' THE LORDS found, That the lands purchased by the Magistrates of Glasgow in 1668, were alienable by their successors in office; and, therefore, repelled the reasons of suspension.'

Reporter, *Justice-Clerk.*
G. F.

Act. *Ilay Campbell.*

Alt. *Alex. Bruce.*
Fac. Col. No 80. p. 328.

1774. *July 15.*

MAGISTRATES and TOWN-COUNCIL of the Burgh of PITTENWEEM, *against*
ROBERT and WILLIAM ALEXANDERS, THOMAS MARTIN, and Others.

UPON the death of Sir Harry Erskine, Baronet, previous to Michaelmas 1765, a competition arose for the district of burghs, of which Pittenweem is one, Sir John Anstruther, Baronet, and Mr Robert Alexander, assisted by his brother and partner William, having severally declared themselves candidates to represent that district in Parliament; on which occasion, John Borthwick merchant in Edinburgh was constituted by Mess. Alexanders their political agent for the burgh of Pittenweem.

The election of Magistrates and Council in the Burgh of Pittenweem, at Michaelmas 1765, being over, a complaint was brought before this Court, upon the statute 16th of his late Majesty, and also an ordinary action of reduction at common law, at the instance of Peter Ramsay and Andrew Wilson, constituent members of the Michaelmas meeting, and certain other burgesses and inhabitants, concluding to void that election, upon the ground of bribery and corruption practised on the council by Mess. Alexander and their agents; and, in particular, that these gentlemen had entered into a formal agreement with Bailie Martin, the eldest magistrate, for himself, and as authorised by his brethren of the magistracy and council, to pay off the debt of the burgh, amounting to about L. 400, besides other stipulations; and that, on the other hand, Bailie Martin engaged, in behalf of his brethren, that the council should be modelled according to Mr Alexander's pleasure at the ensuing election, and that they should support the interest of Robert Alexander, who was the real candidate, and vote for him to be their representative in Parliament.

After the summons was executed, the magistracy and council, called as defenders, assembled themselves, and resolved, by a majority of votes, to defend against the same, though Peter Ramsay for himself, and all such as should adhere to him, protested that there should be no defence; and they chose the foresaid John Borthwick for their agent, by an act of council 9th December 1765, empowering him to choose advocates to defend the town in the above

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A bond granted by magistrates in office, for a sum to defray the expense of their own defence against a complaint upon the head of bribery and corruption, (in which the complainers prevailed) to the person employed by them to conduct that defence, and by him assigned to the person whose political agent he was, and where the principal was in the knowledge of corrupt stipulations made on his behalf with those magistrates, on which the complaint was founded, was found not binding as a debt upon the burgh.

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processes, and, if thought necessary, to appeal to the Parliament for redress ; and the Bailies and Treasurer to give security to such as shall advance money for the above purpose, and for defending themselves and the town-council.

Peter Ramsay protested against borrowing any money, on the town's credit, to defend in the aforesaid process.

Pending the said process, to which there was superadded a complaint against the election 1766, the answers whereto were in the name of both the Mess. Alexanders, as parties to the cause, and other members of council, an act of council was made in October 1766, purporting, that there was laid before the council an accompt due to John Borthwick, agent appointed by the magistrates and town-council of this burgh on the 9th December last, being the expense laid out by him hitherto, in defending against the reduction and complaint, &c. which accompt the council had examined, and find the amount to be L. 477 : 10 : 4d. Sterling, and that the same is a just debt affecting the community and common good of the burgh ; and, in respect the town has not ready money to pay the said accompt immediately, the magistrates and council unanimously impowered Thomas Martin, &c. three of the present bailies, James Martin the present treasurer, and Alexander Hamilton, one of the present counsellors of the burgh, to grant a bond in common form, binding themselves and their successors in office, and the community of the said burgh, and common good thereof, to pay the said sum to Borthwick, his heirs or assignees, against Candlemas then next, and interest from this date. And, in consequence of this act of council, Bailie Martin, &c. did execute a bond to Borthwick in the above terms, 16th October 1766.

The bond was conveyed by Borthwick to Mr Robert Alexander, by assignation, bearing date the 11th November 1766, upon the narrative, that Mr Alexander had then instantly made payment to him of a certain sum of money equal to the sums thereby assigned.

The cause having at length come to be advised, the COURT ' found the complaint competent and relevant ; and found, that the election of the magistrates and council of the burgh of Pittenweem, made by the respondents on the 10th September 1765, was brought about by means of bribery and corruption, and therefore found the same null and void, and reduced,' &c. And, with regard to the other complaint respecting the election 1766, the COURT, of same date, pronounced another interlocutor, sustaining the reasons of reduction of that election ; which judgments were both affirmed in the House of Lords.

Upon application to the King, in Council, warrant was granted for electing a new magistracy and council by a poll of the heritors and resident burgesses : Accordingly, an election was made in this manner ; and this new magistracy insisted in the present action against Mr Borthwick, Mess. Alexanders, Mr Martin, and the other subscribers, concluding for reduction of said bond, and the acts of council in virtue of which it was granted.

The pursuers laid their challenge, *first*, upon the circumstances of the case, and the very consequence in point of precedent, if it shall be understood henceforth to be a rule, that a corrupted set of magistracy, in connivance with the corrupters, may defend every challenge, and maintain themselves in possession, right or wrong, at the expence of the burgh. *2dly*, That even if Mr Robert Alexander could be considered as a third party, unconnected with the burgh, the power of magistrates to borrow money, or to lay it out for the community, of which they are no more than administrators, is limited by the nature of the thing, and by express statute, act 28th Parliament 1693.

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At advising the cause, the two points stirred were, *imo*, Whether it was proved that Robert Alexander was in the knowledge of the stipulation that was made on his behalf? And, *2do*, Supposing that he was in the knowledge of it, whether that was sufficient in law to reduce the bond?

The Court were satisfied upon the first point, that there was no full evidence of Mr Alexander's being in the knowledge of the said stipulation, and likewise of the conclusions against the signers of the bond, when he advanced the money, for the special purpose of defending *them*, and not the burgh; and, upon all these grounds,

Found, That the community was not liable for the contents of the bond in question, and reduced the same, so far as relates to the community; and found the defenders liable in full expenses; reserving to Robert Alexander action against the signers of said bond, and to them their defences, as accords.'

Act. *Ilay Campbell.*Alt. *M'Laurin.*Clerk, *Gibson.**Fol. Dic. v. 3. p. 140. Fac. Col. No 127. p. 339.*

1775. February 21.

JAMES WILSON and Others, *against* JOHN STORRY, Merchant in Paisley, and the MAGISTRATES and TOWN-COUNCIL of Paisley.

THE magistrates and council of Paisley, on behalf of the community, having some years ago made a purchase of certain lands in the county of Renfrew holding of the Crown, and valued at upwards of L. 400 Scots in the cess books, a transaction was entered into between them and Alexander Skeoch, who was then town-clerk of Paisley; in consequence of which, and for the agreed price of L. 45 Sterling, they disposed to the said Alexander Skeoch in liferent, and to themselves, as representing the community, in fee, the superiority of the said lands, and the feu-duties and casualties payable out of them; and Mr Skeoch, as liferenter of the said lands, was admitted upon the roll of freeholders, and stood there during his life without objection.

Mr Skeoch died about six years ago; and the liferent being thereby at an end; in consequence of an offer made to the council by the defender Mr Storry, a burgess in the place, and who had long been a member of the council and

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The magistrates and town-council of a burgh found entitled, for an adequate consideration, to sell the liferent of a superiority, without setting it up to public roup, although informed of an intended competition.