

1669. *June 23.* PEARSON of Balmadies *against* The TOWN of MONTROSE.

No 12.

Whether the Magistrates of a burgh are liable for the acts of their predecessors in office?

PEARSON of Balmadies being Collector of two of ten and the sixteenth penny imposed by Parliament *anno* 1633, and the Magistrates of the Town of Montrose having written a letter to him, promising count and payment *in anno* 1637; some few days after the letter, he made count with Orbiston, General Collector, and charged himself with the whole taxation of Montrose as received; and *in anno* 1654, obtains a decret against the then Magistrates, holding them as confessed upon the quantities of taxation of their burgh. They now suspend on this reason, That the decret was in absence, and the Magistrates only holden as confessed, and they are now content to depone that they never had any stent-roll of the said taxation; and by the charger's count produced, he acknowledges the proportion of Montrose received: And further *allege*, That there being neither warrant from King nor Parliament, there should be no charge or pursuit sustained for these old taxations, especially of money, where the most part of the monied persons liable then are now insolvent, and the Town cannot get their relief; but as for the land taxation, the King has given warrant to lift it and is still secure, being *debitum fundi*. The charger *answered*, That he being neighbour to the Town, did, upon their desire, delay to distress them, and held count for them, as appears by their letters produced; and therefore it will not infer that charges may be used upon the act of Parliament only, unless parties had given writ theréfor; and the Magistrates were obliged by the act of Parliament to have uplifted the taxation *debito tempore* and paid it to the Collectors; and it must be presumed they did so, or if they did not, it was their fault in the discussing of this cause. It occurred to the Lords, that this taxation not being imposed upon the Town's common good, but upon the inhabitants severally for their money, and that the Magistrates were not countable to the Town for the taxation of money, nor were they liable for their Magistrates, who had not this power of collection by their office, but by the commission of Parliament therefor;

THE LORDS found the Town and present Magistrates not liable, but prejudice to the pursuer to insist against the then Magistrates, their heirs and executors.

*Stair, v. 1. p. 622.*

No 13.

A Commissary Clerk not obliged to relieve the Commissaries of the contribution money due to the Commissaries of Edinburgh.

1676. *July 18.*

The COMMISSARY of GLASGOW *against* The CLERK and FISCAL.

THE Commissary of Glasgow being distressed by a decret against him, at the instance of the Archbishop of Glasgow, for relieving the Archbishop, and paying the proportional part due by the Commissaries of Glasgow, of contribution payable to the Commissaries of Edinburgh, to whom the confirmation of all