

No 4.

been customary in the town were presumed to be the set, and were usually confirmed by the convention, as was done in the present case.

It was *answered*, That the powers of the convention were ascertained by the laws and acts of Parliament establishing their authority, which were numerous and known; and their possession of these powers, by the exercise of them, appeared from their acts for ages past, giving sets to the greatest part of the royal burghs in the nation, and altering them for just and necessary causes.

It was *observed* likewise for the chargers, That in the present question it seemed extremely odd, that the suspenders should dispute the authority of the convention, since the only title they pretend to, in support of their privileges, was an act of the commissioners of the convention.

THE LORDS found, That the convention of the royal burghs had power, on just and reasonable considerations, to make alterations, upon due and regular application, in the sets of particular burghs, formerly given them by the convention.

Reporter, *Lord Cowper.*

For the Trades, *Dun. Forbes & Jo. Forbes.*

*Alt. Ro. Dundas Advocatus & Ja. Graham.*

Clerk, *Mackenzie.*

*Fol. Dic. v. 3. p. 100. Edgar, p. 29.*

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1736. February 26.

TRADES of the Burgh of Dumfries *against* THE MAGISTRATES and TOWN COUNCIL.

No 5.

THE acts of Parliament providing, that officers in burghs shall be traffickers, concern only the office bearers, not the counsellors.

*Fol. Dic. v. 1. p. 117.*

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1745. January 29.

MR JOHN CUNNINGHAM Provost, and Others, Magistrates of Inverkeithing, *against* SIR ROBERT HENDERSON Provost, and Others, Magistrates of Inverkeithing.

No 6.

The Court approved of an alteration in the set of a burgh, made by the Convention of Royal Burghs.

THE set of the burgh of Inverkeithing consisted of a provost, two bailies, a dean of guild, and ten burgesses at the least, making fifteen counsellors. The counsellors were for life, unless they demitted; and there being no representation of the trades in council, an application was made to the convention of royal burghs, in the year 1742, who appointed the deacons of the five incorporations, to wit, hammermen, weavers, baxters, taylors, and shoemakers, to be counsellors

*ratione officii*, and that these deacons should be chosen in manner, and conform to the set of the burgh of Culross.

No 6.

The day for electing the deacons is the 25th of September, and on the 29th is the election of the magistrates.

At Michaelmas 1744, as there was a dispute betwixt two parties in the town, one headed by Mr John Cunningham younger of Balbougie advocate, the last year's provost, and the other by Sir Robert Henderson of Fordel, who was chosen provost at this time by his side; the old deacons were hindered coming to council by Sir Robert's friends, because being counsellors *ex officio*, they ceast to be so by the expiration of their office.

THE LORDS, at advising a petition and complaint, presented by Mr Cunningham against the election of Sir Robert, were of opinion, That by the determination of the royal burghs, which neither party inclined to set aside, the trades ought never to be unrepresented in council; and therefore the old deacons had right to sit, at least till the new were received.

This was the purport of their interlocutor; to which, on a reclaiming bill, they adhered.

A&amp;C. W. Grant.

Alt. Graham jun.

Clerk, Hall.

Fol. Dic. v. 3. p. 100. D. Falconer, v. 1. p. 60.

1747. February 20.

The BURGESSES of Rutherglen *against* ANDREW LEITCH.

IN a process, wherein the election of magistrates and counsellors for the burgh of Rutherglen at Michaelmas 1746, was disputed, the question turning on the validity of the votes of certain coaliers, who were burgesses of the town, and who had concurred with the other incorporated burgesses to make a leet of eight, out of which four behoved to be chosen by the magistrates to be upon the council; it was *objected*, That the right of election ought not to be committed to persons so much dependent as coaliers were, whose masters had a right to their service, and could detain them from attending any election; could commit them to a private prison; and who were so little freemen, as to be an exception to the act against wrongous imprisonment, which is the security of the liberty of the subject.

*Answered*, There is no state of slavery with us; and a man's dependence as a servant, will not take from him a right otherwise competent; although in fact a coalier may be detained from an election, yet if he is present, he must be allowed to vote; and perhaps his master, who would arbitrarily hinder him, may be compelled by order of law to allow him to go. Coaliers are capable of property; and if one of them were possess of a freehold, he would surely be allowed to vote for a member of Parliament.

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No 7.

The Lords repelled the objection to coaliers, burgesses of a town, voting in the election of its magistrates, that they were slaves, and under influence.