

1755. *January 8.*

THE FEUERS and INHABITANTS of the TOWN of Kelso, *against* The DUKE of ROXBURGH.

No 6.

By the erection of a village into a burgh, certain exclusive privileges of trade are understood to be granted to the corporation, which, in a burgh of barony, may be regulated by the baron, but cannot be annihilated.

THE town of Kelso, before the Reformation, belonged to the monastery of Kelso; and having been alienated by the King to the family of Roxburgh, was erected into a burgh of barony, by charter, bearing date 12th June 1614. This charter is in the usual form, erecting the village of Kelso, with its lands, tenements, &c. into a free burgh of barony; giving power to the present inhabitants, and to those who should be admitted as burgesses by the family of Roxburgh, liberty to buy and sell wine, wax, and all other merchandize which are privileged in a burgh of barony; and with power to the family of Roxburgh to admit bakers, brewers, butchers, and all other craftsmen, who shall have liberty to exercise their respective crafts in the same manner as in other burghs of barony.

It appears that, within this burgh, the several crafts have acted as societies, with the approbation of the superior and his bailies, as the like societies are accustomed to do in other burghs, by admitting freemen upon payment of certain dues or upsets, excluding others from exercising their crafts within the burgh, choosing deacons and box-masters for managing the funds of the society, and applying the same for the use of their poor.

The present Duke of Roxburgh having, by certain acts and ordinances, endeavoured to destroy or annihilate these societies, and their exclusive privileges, an action was brought by them, for declaring their privileges above-mentioned.

THE LORDS found the merchants and the several crafts are corporations, having perpetual succession, subject, nevertheless, to such proper regulations as the Duke of Roxburgh and his successors, barons of the burgh of Kelso, shall make, touching the government of the corporations, or admission of new entrants; the said regulations being always for the good and welfare of the said corporations and burgh.

The difficulty in this case was, that no seals of cause were produced by the pursuers; nor in all likelihood was there ever a seal of cause granted to them. This difficulty, however, was surmounted upon the following considerations: By the erection of a village into a burgh of barony, the houses, &c. are incorporated into one feudal subject; and the inhabitants are also united into a corporation, which holds the feudal subject of the baron. Next, by the erection of every burgh, whether of royalty, regality, or barony, certain exclusive privileges of trade are understood to be granted to the incorporation; because such is the purpose and motive for erecting a burgh. Therefore the town of Kelso enjoys these exclusive privileges, without necessity of alleging that seals of cause were granted by the baron to the particular crafts.