No 32.

To admit a contrary practice would occasion much inconvenience and disorder.

Reference was also made by the respondents to a decision of the Court in 1770 or 1771 (not collected), where the question appeared to have been determined agreeably to the argument maintained by them.

'THE LORDS dismissed the complaint, and found expences due.'

Act. *Wight*, *Hay*, et alii. Alt. *Tait*, et alii.

Craigie. *Fac. Col. No.* 83. *p.* 150.

1789. *August* 6. THOMAS HIGH *against* ROBERT MAIN.

No 33.
It is a disqualification from voting, that the party holds an office within the burgh at the will of the Magistrates.

WILLIAM CHAPMAN had been appointed town's officer and trade's officer, and John Chapman jailor, in the town of Kinghorn, all of these offices being revocable at the pleasure of the magistrates.

In a complaint, therefore, in terms of the statutes 16th Geo. II. and 14th Geo. III. preferred by Thomas High, it was *contended*, That the votes given by these men, in electing Robert Main into the office of deacon of the weavers in that town, in exclusion of the complainer, should not be reckoned. The complainer

Pleaded: It is necessary for preserving the independence, as well as the purity of elections, that those persons whose livelihood depends on the will and pleasure of others, should not be admitted to vote. This was provided by the act of the Convention of Estates in 1689, c. 22. which must be considered as declaratory of the common law. It is also ordered, in every warrant that has been issued for a poll election. And although sometimes, in practice, this rule does not seem to have been sufficiently attended to, yet in the later decisions a due regard has been paid to it; 1775, Andrew Paul *contra* Alexander Fraser.

Answered: It would be carrying the system of political freedom, and the purity of elections, to a great length indeed, if the circumstance of a burgess having an office dependent on the magistrates, were to incapacitate him. No such regulation, however, exists. The directions prescribed in the act of Convention, as well as the warrants for poll elections, which are merely temporary in their nature, suppose the general law to be different; and though the decisions on this point are far from being uniform, those examples in which the objection was over-ruled, as being more agreeable to justice, ought now to be followed.

Some of the Judges being unwilling to deprive any man of his right of voting without a positive regulation or immemorial usage, were inclined to repel the objection; but the majority, moved by the late decisions, being of a different opinion,

'THE LORDS sustained the objection to the votes of John Chapman as jailor, and of William Chapman as town-officer and trades-officer; and found, that

No 33. their votes ought not to have been taken in the election of the corporation of weavers in Kinghorn upon 26th September last,' &c.

For the Complainer, *Dean of Faculty, Alex. Fergusson, et alii.* Alt. *Tait, Hope, et alii.* *Craigie.* *Fol. Dic. v.* 3. *p.* 101. *Fac. Col. No* 87. *p.* 157.

Nota, A similar determination was given in several other questions of the same kind.

1791. *February* 23. ALEXANDER BIRTWHISTLE *against* LORD DAER.

No 34. The being a Peer's eldest son does not disqualify for a place in the council of a burgh.

LORD DAER, the eldest son of the Earl of Selkirk, having been a candidate for the office of provost of the burgh of Kirkcudbright, it was

Objected: That being the eldest son of a Peer, he could not be elected either as a magistrate or as a counsellor of any burgh.

Answered: There exists no law or regulation, to disqualify the eldest son of a Peer from being a counsellor in a royal burgh. Were it even supposed to have been determined by the Scottish Parliament, that a Peer's eldest son could not sit as the representative of a county or a burgh, and that this should have the effect of excluding from the British House of Commons, such a disqualification could not be extended, by implication, to the case in question.

THE LORDS repelled the objection.

Act. *Solicitor-General, Rolland.* Alt. *Dean of Faculty.* Clerk, *Menzies.* *Stewart.* *Fol. Dic. v.* 3. *p.* 101. *Fac. Col. No* 165. *p.* 335.

1797. *June* 17. DAVID AITKEN *against* ALEXANDER CHALMERS.

No 35. The meeting of council, to fix the day for electing a delegate to chuse a member of Parliament for a royal burgh, must be *called*, but need not be *held*, within *two* days after the precept is received by the chief Magistrate.

THE Sheriff's precept for electing a delegate to chuse a member of Parliament for the royal burgh of Culross, was delivered to Alexander Chalmers, the chief magistrate then within the burgh, on the 30th May 1796. He immediately marked on the back of the precept, the date of his receiving it, and, at the same time, summoned the council to meet on the 2d of June, to fix a day for naming their delegate.

David Aitken, one of the deacons, was present at the meeting of the 2d June, and made no objection to its regularity; but, in a petition and complaint, he afterwards stated, that, by 16th Geo. II. cap. 11. § 42. it is enacted, that the chief magistrate of the burgh, shall, under penalty of L. 100 Sterling, 'within 'two days after receipt of the precept, call and summon the council of the burgh 'together, by giving notice personally, or leaving notice at the dwelling-place 'of every counsellor then resident in the burgh; which council shall then ap- 'point a peremptory day for the election of a commissioner for chusing a bur- 'gess to serve in Parliament;' and that, as the meeting, in this case, was not held till the 2d June, *three* days after the precept was received, the penalty was incurred.