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.

Answered: This statute does not require that the meeting should be *held*; but only that it should be *called* within two days from the receipt of the precept, the object of the enactment being to prevent the chief magistrate from keeping it up arbitrarily. A summons always implies reasonable *inducicæ*. No 35.

The Court were of this opinion, and unanimously dismissed the complaint.

Act. *H. Erskine.* Alt. *D. Williamson.* Clerk, *Pringle.*

Fac. Col. No 37. *p.* 83.

——— *against* Commissary SMOLLET, Provost of Dumbarton.

There is mentioned at page 1843, and frequently afterwards in No 8. a case said to have been decided in the House of Lords, 19th February 1735.—The Editor has not been able to find it, either in the Journals of the House of Lords, or in the appealed cases sent to the Advocate's Library. It would seem, that Commissary Smollet, who had been elected provost of Dumbarton, had been objected to as a country gentleman, and non-resident. The Court of Session had annulled the election, but the House of Lords had sustained it; because usage had prevailed so far against the statutes, as to put the town in *bona fide* to elect a stranger their provost; consequently, this particular election ought to be sustained, the full effect, for the future, of the statutes being reserved.

See APPENDIX.

SECT. IV.

Who liable to Burgal Services and Prestations.

1669. *February* 1. BOSWALL *against* TOWN of KIRKALDY.

No 36.
An heritor of burgh lands not residing within the burgh, was found not liable to the stent for the second minister's stipend, nor for the charges of sending commissioners to the Convention.

JOHN BOSWALL being stented by the town of Kirkaldy for some tenements and acres, to pay a proportional part of a second minister's stipend; as likewise of the charges of the Commissioners of that burgh to the Convention of burghs. ——THE LORDS found, That he could not be liable at all to the charges for keeping the Convention of burghs, neither for any part of the second minister's stipend, unless the town could prove, that to his knowledge he or his tenants had paid the same yearly past memory of man.

Fol. Dic. v. 1. *p.* 117. *Gosford, MS. p.* 99.

1672. *February* 14. FORBES *against* The TOWN of INVERNESS.

No 37.
The formalities requisite in ascertaining and imposing stent.

FORBES of Culloden, and other feuers of Inverness, pursue the town for imposing unwarrantable stents, not authorised by Parliament, and that upon them who were not inhabitants, but feuers of the town-lands, for their ministers stipends, reparation of the bridge, and for processes against the pursuers themselves, and that the stents were most unequal, and that they had proceeded contrary to the Lords sentence formerly pronounced, whereby they declared, that no voluntary stent should be imposed without authority of Parliament, till public intimation were made, and beating of drums, calling the whole inhabitants to show the cause of the imposition, and that it was for the good of the town;