

BURGH ROYAL.

SECT. I.

Set of Burgh.

1668. *January 2.*ARCHIBALD WILSON *against* The MAGISTRATES of Queensferry.

ARCHIBALD WILSON being elected one of the Bailies of the South Queensferry, and being charged to accept and exercise the office, suspends on this reason, that by the 29th act, Parl. 5th, King James III. no magistrate of burgh is to be continued in office longer than one year; and by a particular act of that burgh, no magistrate is to continue above two years; and true it is, that the suspender hath served as Bailie two years already.—It was *answered*, That the act of Parliament is long since in disuetude; and as to the act of the burgh, the election of the suspender being done by them, who have power to make that act, is in effect an alteration thereof; and this burgh being poor, and penury of persons to serve, it will dissolve the same, and discourage all others to serve, if the suspender be liberate.

THE LORDS found the reasons of suspension relevant; and found, that the suspender could not be compelled to serve longer than one year at once in the same office.

Fol. Dic. v. I. p. 117. Stair, v. I. p. 498.

*** The same case is reported by Dirleton :

ARCHIBALD WILSON being charged to accept the office of a Bailie of the town of Queensferry, suspended upon the act of Parliament, James III. Parliament 5th, cap. 29. whereby it is statute, that magistrates within burghs should not be continued longer than a year; and subsumed that he had served the preceding two years.

This case being reported, the LORDS found the reason relevant.

And albeit the act of Parliament be not in observance, especially in Edinburgh, the present provost having been in that place diverse years, yet the am-

No 1.

A person suspended a charge to accept of the office of Bailie of a Royal Burgh, upon act 1469. c. 29. which prohibits magistrates from continuing longer than one year, as he had now done. The reason of suspension was found relevant.

No 1. bition and unwarrantable practice of those who violate the said act, and others made to that purpose, ought not to prejudge others who are more sober, and claim the benefit of the same.

Dirleton, No 124. p. 51.

1679. *February 20.*

The TRADES of BRUNTISLAND *against* The TOWN of BRUNTISLAND.

No 2.

A burgh is not obliged to create deacons of trades, unless when the good of the town requires it.

THE Trades of Bruntisland pursue their Magistrates to grant seals of cause unto the seven ordinary trades, as in all burghs, constituting them in several deaconries; and that their deacons may be members of council, and have the government of the burgh, as in other burghs, in respect the town is erected with all the privileges of a burgh-royal, and that all the neighbouring burghs-royal, are not only governed by merchants, but also by the deacons of trades.—The defenders *alleged* absolutor, because albeit their erections gave them power to erect incorporations of several trades, yet it induces no obligation upon them so to do; nor is there any inconveniency for it, the town being very small, and the magistrates able enough to oversee the work and duty of the several tradesmen. *2do*, Whatever might be pretended recently after the erection, yet the magistrates having, without interruption, governed the town without deacons, these hundred years, they are secure by prescription, and cannot be now questioned by the trades.

This defence the Lords found relevant, and assoilzied.

January 20. 1681.

THE Trades of Bruntisland pursue the Magistrates of Bruntisland to grant them seals of cause, for erecting them in seven several deaconries, in the ordinary trades, in respect Bruntisland is an ancient burgh-royal; and the erection thereof produced, bears, 'all privileges of any burgh-royal in Scotland, and specially of several chief burghs therein-named;' all which have deaconries who have power to convene, and to order those of their trade to oversee their work, and to exclude unfreemen; yet, in this town, the whole power of government is in the hands of the maltmen, and some few merchants, who have no skill of tradesmen's work, and do suffer unfreemen to exercise their trades in the town; or, if they admit any as freemen, they cannot know or judge their skill or sufficiency, and therefore deaconries ought to be constitute, and the deacons to have interest in the government of the burgh; but, by the act of Parliament of King James I. cap. 39. *All trades are ordained to have deacons*; and, therefore, the Magistrates have done wrong in refusing to erect these trades into deaconries, and to allow them a just interest in the government of the town, seeing the erections of burghs is a society of merchants and tradesmen; and albeit some