

No 16.

ed, except burgesses exercising trade or merchandise, and that for their tenements and lands within burgh allanarly. (See This case, Sec. 4.)

Fol. Dic. v. 1. p. 117. Stair, v. 2. p. 588.

No 17.

Magistrates found entitled to imprison bakers, on account of insufficient bread.

1696. July 8.

BAXTERS of GLASGOW *against* The MAGISTRATES.

LAUDERDALE reported the Baxters of Glasgow against the Magistrates, on a bill of suspension and charge to set at liberty, being incarcerated for bad and insufficient bread, and disconform to the standard of the Edinburgh bread. Their reasons were, that neither their mills could grind flour so well as Edinburgh, nor their servants bake so white.—THE LORDS considered this was a matter of government proper and competent for the Magistrates; and, therefore would not interpose, but refused their bill till they gave obedience.

Fol. Dic. v. 1. p. 117. Fountainhall, v. 1. p. 726.

1715. June 17.

The MAGISTRATES of ABERDEEN, and their FISCAL, and JOHN CRAIG, Baxter there, *against* DAVID SPEEDIMAN, late Deacon Convener, and other Members of the Convener Court there.

No 18.

The convener, and other deacons in a burgh, have no power to hold or fence courts; but they have right to make by-laws to regulate their own corporation.

THE said convener and his brethren, having pronounced two decreets in March 1712, one against the said John Craig, for the balance of an account due to the trade; the other americiating one Alexander Duff, for calumniating the said Craig; upon a complaint hereof given in to the Magistrates by their Fiscal and Craig, they found the said two decreets, or acts, unwarrantable and illegal incroachments upon the office of the magistrates, and, therefore, ordained the convener to cause raze them out of the record of his court, under pain of 100l.; and decerned him to pay to John Craig, 20l. Scots of damages; reserving action to the baxter-trade against the said Craig, for what he may be justly resting; and to Craig, for the verbal injuries, before the judge competent, as accords. This sentence being suspended, and coming in, by a report, before the Lords, the question turned upon the power of the convener court, and whether the magistrates could cognosce upon these sentences.

And it was *alleged* for the suspenders: That not only was there an indenture betwixt the town-council and incorporations, whereby the town was not to meddle with any thing relating to the economy of the trades among themselves (which is the present case, the one decreet being concerning their box, ordaining the box-master's balance to be paid in; and the other anent contumely offered in face of Court); but also by the 39th act, Parliament 2d, James I. it is statute, 'That ilk craft shall have a deacon for governing and essaying all works, before the craftsmen of that craft.' And that the deacons likewise had the

correction of their trades, is plain from diverse acts of Parliament, rescinding particular statutes made by the trades, but never altogether discharging the statutes and regulations for the future. And King James VI., by his grant in favour of the trades of Edinburgh, Perth, Dundee, and Aberdeen, dispenses with a former act of Parliament, whereby deaconries are abolished; and allows to the trades of these burghs, not only to chuse their own deacons, but also, *ut faciant licita statuta et ordinationes ad conservationem boni ordinis inter artifices.*

Answered for the chargers: That giving decreets for payment of money, and americiating for a contumacy, was what did not fall under the economy of the trades, which only consisted in the choice of their members: The regulation and inspection of the subject of their respective trades; the seeing to the sufficiency of their work, and managing and distributing their public box, and the specialities above-mentioned make no alteration: For *imo*, The trades have no such power even as to what may concern their boxes; for suppose the box-master be in arrears, yet they could not give a decret for money, but that behoved to be pursued by the incorporation before the civil judge. Nay, otherwise, by the same reason, they might give sentence against any man to whom they had lent money: But as no private man, as to his own stock, can *sibi jus dicere*; so no more can an incorporation with respect to their box. *2do*, As to the fine; this is yet more irregular; for though they can stop a tradesman, and so in a manner punish for insufficient work; yet to fine for opprobrious language, is no more proper to them than any other extraneous act: And all they could do in this case, was to pursue before the Commissary Court, or Bailies, or Magistrates *qua* Justices of Peace, and libel the *locus delicti* as an aggravation.— And as to the act of Parliament, King James's grant, &c. *answered*, That the above clause could not be stretched to a right of magistracy or power in judging or making statutes, further than in things indispensably necessary, and relating to their several trades; such as sufficiency of work, and intrants, disposing of their public money, &c.; but cannot be extended to the judging in civil or criminal cases for blood or blows, on point of right, although among the brethren of the same craft.

It was further *alleged* for the suspenders, That the magistrates had here assumed a power not competent to them, to reduce sentences of other courts; and if the convener court committed iniquity, the reduction was competent elsewhere; far less could the magistrates fine the convener, or decern any damage to the private party, who should have meaned himself by suspension or reduction; and in effect this was to be judges in their own cause, viz. to establish their jurisdiction over another Court, which they ought previously to have done by a declarator before the Lords.

Answered for the charger: *imo*, That suppose the trades had the power contended for, yet it is but subordinate to the magistracy of the burgh, as was found lately in the case of the Town of Dundee and their Trades, *voce JURISDICTION*, even in the matter of their proper economy. *2do*, The magistrates here

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were not in a reduction of sentences of a Court, but in repressing a disorder and usurpation of a jurisdiction that wanted all foundation ; so that they were properly punishing a crime, ordaining such acts to be razed, and parties leased to be redressed ; for since the trades had no such power and jurisdiction, they could be in these particulars no more considered but as private persons ; and, if every private man, or society of men, within a burgh, should set up a Court, and assume a jurisdiction, it were very odd to think the magistracy could not prevent and punish this. And hence it also follows, that there was no necessity of a previous declarator, no more than previously to the magistrates punishing any disorder within their burgh, for which they have an inherent jurisdiction.

Lastly, There was produced a disclamation from John Craig, the person against whom one of the said decreets did pass ; and the suspenders *contended*, That since he is the person leased, the letters ought to be suspended.

Answered for the charger : That the charge was carried on in name of the magistrates and procurator-fiscal, against the deacon-convener, for assuming a jurisdiction within the burgh ; which being a crime in itself, cannot be purged by the said disclamation.

THE LORDS found the letters orderly proceeded, for razing the two decreets mentioned in the decret charged on, out of the convener's records, in regard they are pronounced by persons having no power to hold or fence courts ; reserving to the suspenders their right of making by-laws for regulating the subject matter in that decret anent the box-masters, or any other subject, for the better regulating their own corporations ; but suspended the letters for the L. 100 of penalty and L. 20 damages.

Act. *Sir Walter Pringle.*

Alt. *Arch. Ogilvie.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 117. Bruce, No 103. p. 125.

SECT. III.

Burgh Election.

1676. July 14.

TOWN of ABERBROTHICK *against* The EARL of PANMUIR.

No 19.
It was found that the erection of a burgh royal, with the privilege of electing their Magistrates, did not ex-

THE TOWN of Aberbrothick pursue a declarator of their right to elect their magistrates, as being a free burgh royal, and that the Earl of Panmuir had no right to elect any of them. Who *alleged*, That the Marquis of Hamilton was infest by the King in the abbacy of Aberbrothick, with express power to *elect one of the Bailies of Aberbrothick*, and by virtue thereof had been in constant possession so to elect ; and likewise, the defenders predecessors deriving right from the Marquis. It was *answered* for the pursuers, That they were at that