greater degree of dependence could well be imagined. It was by the act of election alone that the Bailies had right and title to jurisdiction; and, as the first was confessedly dependent upon the Baron, the second, which was a necessary consequence of that act, must, with equal reason, be considered as standing in the same relation. No 388.

THE LORD ORDINARY "found the corporation or community of the burgh of barony of Kilmarnock, and the jurisdiction belonging to the Magistrates thereof, is independent of the Baron; and, therefore, repels the reasons of suspension."

The cause having been advised, upon a petition and answers, it was observed from the Bench, that though the jurisdiction, in this case, was not strictly and to the fullest extent independent, yet, as the Council was entitled to name, if the superior neglected, the community had an inherent right; and that the Baron possessed the mode only of nomination, not the radical right of jurisdiction.

The Court adhered. See No 15. p. 6313.

Lord Ordinary, *Auchinleck.* For Gray, *Boswell.* For Reid, *D. Dalrymple.*
Clerk, *Campbell.*

R. H. *Fac. Coll. No 90. p. 266.*

1790. *November* 30. MAGISTRATES of PAISLEY & JOHN ADAM.

No 389.
In respect of ancient usage, horning was found competent to pass on the extracted decrees of the Magistrates of Paisley, tho' only a burgh of barony.

A BILL of exchange having been protested at the instance of Adam, and the protest registered in the Court-books of the burgh of Paisley, on this registered protest a bill of horning was presented. In consequence of a doubt concerning its competency, started by the Clerk of the Bills, in respect that Paisley was not a Royal Burgh, the LORD ORDINARY "appointed the complainer to give in a short memorial, distinctly stating the nature and constitution of the burgh of Paisley, and in what respect horning is competent to pass upon the extracted decrees of its Magistrates, or on protests, or other writings registered in the books of that burgh."

Upon this the Magistrates sisted themselves, as parties, in support of their jurisdiction, and gave in the memorial required by the Lord Ordinary, who afterwards ordered them to prepare a memorial to the Court, in order to report: In this it was

Pleaded, The Town of Paisley was erected into a burgh of barony, by a charter of King James IV. in 1488; and, afterwards, the superiority of it was obtained by the Council and community, by whom it is held of the Crown.

The Magistrates have constantly exercised jurisdiction, both civil and criminal, with every privilege of a Royal Burgh, except that of sending a representative to Parliament; a jurisdiction which has been uniformly recogni-

No 389. sed by the Supreme Courts. In particular, a large number of hornings and captions, on their decrees, from the year 1742 downwards, has been exhibited. That it was a legal and competent jurisdiction will appear on examination.

The letters of four forms, which had been confined originally to obligations *ad facta præstanda*, were extended to decrees for liquid sums, by act of sederunt, 23d March 1582, ratified by act of Parliament, 1584, c. 139. This statute authorises execution for liquid sums, 'of decreets given, or to be given, 'by the Lords of Session, and sicklike of decreets given, or to be given, by 'whatsomever Judges within his Majesty's realm, whereunto the authority of 'the said Lords of Session has been, or shall happen to be interponed;' reference being here made to decreets or letters conform, so well known in our ancient law. Hence it is evident, that this personal execution was appointed to issue, upon the decrees of all Courts of established jurisdiction, whether superior or inferior.

Afterwards, execution by horning, on a single charge, came to be introduced in some particular instances; and it was usual to insert, in obligations for borrowed money, a stipulation to that effect. Then followed the statute 1592, c. 181. which, in order to avoid the expense of the letters conform, ordains the Lords of Session to 'direct letters of horning on all decreets and acts given 'by Provosts and Bailies of burghs *inter con-cives*.' Here the term "burghs" plainly comprehends all burghs, whether those of barony, those of regality, or Royal Burghs; and it is so understood by Sir George M'Kenzie in his Observations, who employs the corresponding general expression of "towns."

In like manner, the subsequent act of 1606, c. 10. which confers the same privilege of execution by horning, on decrees of Sheriffs, &c. states it, in the like general terms, as ordained by the former statute, to pass on "decreets, "acts, and sentences, of Provosts and Bailies within burgh."

As the terms are general, so there is the same reason for extending execution by horning, to the decrees of the Magistrates, of burghs of barony, or of regality, as of Royal Burghs. If decreets conform, and letters of four forms, were competent upon the decrees of whatsomever Judges, or of the Magistrates of burghs of barony, there is surely no reason why diligence by horning, which was a mere substitute for the former more inconvenient mode, should not be equally competent.

In the present case, this conclusion is confirmed by the inveterate and immemorial usage respecting the burgh in question; and it is a practice founded in the highest expediency; as the jurisdiction of the Magistrates must otherwise have been rendered nugatory, as often as a party chose to pass over the bounds of their territory.

On advising this memorial, and the report of the cause, the Court paid attention to the inveterate usage; but, at the same time, they seemed to consider burghs of barony, or of regality, as differing little or nothing, in point of

jurisdiction, from Royal Burghs. It was also noticed, that the burgh of Paisley, instead of a subject superior, holds of the Crown. No 389.

THE LORDS, therefore, sustained the jurisdiction in question.

Reporter, *Lord Dreghorn.* Act. *Cullen.*

S. *Fol. Dic. v.* 3. *p.* 362. *Fac. Coll. No.* 152. *p.* 303.

*** *See* BURGH ROYAL.

DIVISION XVIII.

Presbytery.

1768. *July* 22.

Mr GEORGE BROWN *against* The HERITORS of DUNFERMLINE.

No 390.
Presbyteries have no power to modify a schoolmaster's salary.

IN the beginning of the last century, the Magistrates of Dunfermline, upon the narrative, that Anne of Denmark, Queen to James VI. had mortified L. 2000 Scots, for that and other purposes, granted bond for themselves, and their successors in office, to pay L. 100 Scots of salary to the Master of the Grammar School, provided that he should be admitted with consent of the Queen, and her successors in the lordship of Dunfermline, or of the heritable Bailie thereof.

Mr George Brown was admitted by the Magistrates in 1748, with consent of the Marquis of Tweeddale, heritable Bailie; and, by contract with the Magistrates, accepted of L. 140 Scots, as his salary; including the L. 100 Scots, payable out of the mortification, with L. 40 more, revokable by the Magistrates at pleasure.

No salary having been settled by the heritors, Mr Brown applied to the Presbytery, who sustained themselves competent, under the statute 1633, c. 5. as having come in place of the Bishop; and found, that the mortification is no part of the legal provision for the schoolmaster; and modified 200 merks, including the L. 40 settled by the town, as the legal salary of the schoolmaster, in all time coming; and appointed the heritors to stent themselves, conform to their valued rent, for the remainder of the 200 merks.

The heritors brought an advocation, and *pleaded*, That the sentence of the Presbytery was null and void. Every thing respecting the settling of schools is regulated by the act 1696, c. 26. by which the Presbytery have no other