

* * * Gosford reports this case :

No 147. 1668. *July 22.*—JOHN BOSWELL having a tenement and some acres of land in Kirkcaldy, did intent action against the Magistrates for repetition of some impositions laid upon his land more than was due ; and particularly, for payment of a proportion of the stipend given to a second minister, for which they had stented his lands in relation to the whole stipend ;—whereas, at first, the half of the stipend was only to be paid by the burgh, and the other half by the landward parish ; but there being a new kirk erected for the landward, that half paid to the Town minister by them was settled upon the minister of the new kirk ; whereupon the Town did impose the same upon their own incorporation.—THE LORDS found, that the Magistrates had no power to impose such a stent, albeit for a pious use, unless the heritors on whose lands it was, imposed, or made voluntary payment.—*See BURGH ROYAL.*

Gosford, MS. No 44. p. 16.

1669. *July 21.* TOWN of PERTH *against* WEAVERS of the BRIDGE-END of Perth.

No 148. THE act 156th, Parl. 1592, entituled, “The exercise of crafts within suburbs adjacent to burghs, forbidden,” does not extend to suburbs which are within a regality or barony ; yet a royal-burgh having been in immemorial custom of levying a duty from craftsmen, exercising their trade in a suburb within a barony, insisted they had a right to continue the exaction by the positive prescription. *Answered,* The craftsmen were no incorporation, and the duty paid by any of them could hurt none but themselves ; which the LORDS sustained, and decerned only against those who had been in use of payment.

Fol. Dic. v. 2. p. 109. Stair. Gosford.

* * * This case is No 52. p. 1905. *voce* BURGH ROYAL.

No 149.
Found in conformity to Douglas *against* Town of Jedburgh, No 145. p. 1589. that 40 years possession gave right to a Sheriff to ride a fair, and to exact so much for gloves, and for the best staig in the fair.

1672. *July 11.* EARL of CALLENDER *against* TOWN of STIRLING.

THE Earl of Callender being infest in the heritable office of Sheriffship of Stirling, pursues a declarator against the Town, that he hath right to ride their fairs, and to exact so much for the Sheriff-gloves, and for the price of the best staig in the fair. The defenders *alleged* absolvitor, because the Earl was not infest in any such duties ; and albeit he or his authors had been in possession thereof, it could only be understood in way of gratification, to be continued no longer than the burgh pleased, and if it were otherways exacted, it was unwarrantable ; neither can the pursuer pretend prescription by 40 years possession before this pursuit, because he hath been long out of possession. The

pursuer *replied*, That he being infest in the office of Sheriffship, with all emoluments and casualties thereto belonging; long possession can only declare what they are, and neither in this nor any such infestment is there any thing specially exprest, and though the pursuer cannot say 40 years possession before the pursuit, it is known that he was incapacitated to possess during the Usurpation, while all heritable offices was suppress.

THE LORDS found that 40 years possession before the Usurpation, or immemorial possession before the fair, of these particulars, was sufficient to extend the general clause of the pursuer's infestment thereunto.

Fol. Dic. v. 2. p. 110. Stair, v. 2. p. 99.

1674. July 14. TOWN of INVERNESS *against* The FEUARS of DRAKIES.

THE TOWN of Inverness having charged the Feuars of the forest of Drakies (which forest was disposed by the King to the Town, and by them feued out for particular feu-duties, *pro omni alio onere*.) for payment of several stents laid upon them by the Magistrates and Council; they did suspend, and raised declarator, that they ought to be free of bearing any stents for the particular use of the Town of Inverness, in respect of their charter, and that they had no part of the burgage land of the Town.

In which process the LORDS sustained immemorial possession of the Feuars bearing private stents, and admitted to the Feuars' probation interruptions; and there being produced many acts of the Town-Council, and witnesses, the sum of the probation amounted to this, that *in anno* 1624, the bridge of Inverness being ruined with an inundation, there was a voluntary contribution of the shire, Town, and its territories, for making it up; and that falling short, the Town did stent their inhabitants, and the heritors of their burgage lands, and also their feuars for L. 1000; they did also stent them for reparation of the kirk, and for the charges of Duncan Forbes who was sent to Edinburgh and London, for procuring to the Town some further freedom of markets, and for freeing them from transgressing letters of intercommuning at the instance of the Earl of Moray against the Clanchattan. There was no more stents proved till the year 1637, when the stipend to an assistant minister that spoke Irish was imposed upon all, but paid by none; but there were frequent stents for public dues in the time of the troubles, and the late stents since the Kings return, which in a short time exceeded 100 months' assessments, a considerable part whereof was for expenses of process against the Feuars, and which were suspended.

THE LORDS found that this probation was not sufficient to infer a right to the Town to stent for their own private use, and did declare, that seeing these Feuars bore no burden within the shire, but with the Town, they should be stented for all taxations and impositions by King and Parliament, and for

No 149.

No 150.

In a process against feuars holding of a town, concluding against them to bear a proportion of the private stents of the town, the Lords sustained immemorial possession of the feuars, bearing private stents, as relevant to make them liable in time coming, although their charters from the town bore the reddendo of particular feu-duties *pro omni alio onere*.