

No 15.

negative upon the choice made ; all that they had to do being nothing farther than the mere ministerial power of admitting him as counsellor, and administering to him the oaths taken by counsellors. With respect again to the convenery, it was shown to be a meeting composed of the deacons themselves, not in their character as *counsellors*, but in their distinct original capacity, *as heads of their several crafts* ; and therefore the being presented and received in council was not requisite, in order to entitle a deacon to be a member of the convenery.

THE COURT had no difficulty in finding the determination of the magistrates and town-council erroneous : They therefore ‘ suspended the letters *simpliciter*, and found expences due.’

Reporter, *Lord Kennet.* For Mr Chalmer, *Cullen, Cha. Hay.*  
For the Magistrates, *Buchan-Hepburn, Blair.* Clerk, *Colquhoun.*

*Fol. Dic. v. 3. p. 99. Fac. Col. No 58. p. 92.*

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S E C T. II.

Government of the Burgh.

1678. *January 11.* THE TOWN of ABERDEEN *against LESK and Others.*

No 16.

Magistrates may impose a stent for the utility of the burgh ; but not otherwise than by calling the whole incorporation, and proceeding with the consent of the major part of those who shall happen to convene.

THE Magistrates and Town Council of Aberdeen having ordered a stent of 16,000 pounds, upon many several considerations contained in the act ; Lesk and several other inhabitants gave in bills of suspension, and upon the chargers desire, the LORDS ordained the cause to be discussed upon the bill, as if the suspensions were past : Whereupon the suspenders *insist* on these reasons, *1mo*, That the magistrates and councils of burghs-royal have only the power of jurisdiction and government, and thereby may stent the inhabitants for public impositions, by King and Parliament, which burden the whole incorporation, and is only to be proportioned by the Magistrates ; but can impose no other burden or stent upon the incorporation ; or otherwise property cannot be preserved against arbitrary power, and the Magistrates would exercise greater power than the King doth exercise ; and, therefore, *1mo*, This act should be suspended so far as concerns inhabitants which are not of the incorporation, but live there for their own inconveniency ; which, if sustained, would scare all persons to live in towns, to the common detriment of burghs-royal. *2do*, It is clear by the act, that the most part of the grounds thereof are the town's debts, which cannot burden the incorporation, but only the common good of the town, whereunto the Magistrates have the power of administration for common utility, to raise money upon the common good of the town, but cannot for their debt, or any voluntary cause, stent the whole incorporation ; but, in such cases, the necessity, or utility of the in-

corporation, is only to be judged by the incorporation, and not by their magistrates. 3tio, The said stents are most arbitrary and unproportional, according to the fancy and favour of stent-masters. And, in the like case between the Town of Inverness and Forbes of Culloden, and other burgesses, (*infra*) the Lords determined the form of imposition and stents of burghs, ' That before any stent, proclamation should be made by tuck of drum through the town, intimating the reason of a stent ; that, if it were on a public law, all parties having interest might be present at the election, and swearing, of stent-masters, and might object against the qualifications of them ; and, if a voluntary stent were proposed, that the whole trafficking burgesses, members of the incorporation, might compear to consider the reasons thereof, and to consent to the same, if they found it necessary or profitable, by the plurality of those who appear ; and that the stent, after it were made by the stent-masters, upon oath, should remain four days in their clerk's hands, patent to all persons stented, that they might complain to the Magistrates, if any were stented that should not be, or were unequally stented.' And likewise in the case of John Bosewell *contra* the Town of Kirkaldy, ' He was liberate from stents ; even for ministers stipends, except for his lands within burgh, or in so far as the stipend was settled by decreets of the plat, consent, or prescription :'\* And the inhabitants of Inverness were found free of stents for their bridge or kirks, except for their trade, or tenements in burgh, and not for their other lands, though holden feu of the burgh.—The chargers *answered*, That all burghs-royal have power to stent the burgh, not only for imposition by public law ; but also, that all manner of persons, inhabitants in burghs, exercising any traffic or merchandise, or having charge in the same, shall bear their part in all stents for the weel of the realm, and the utility of the burgh ; act 154, Parliament 1592. And, the act of Parliament 1597. cap. 276. ' allows Magistrates of burghs to stent their burgesses for their rents and haddings within burgh,' according to which this, and all other burghs have been in immemorial possession of stenting for the utility of the burgh ; and it is offered to be proven, that they have observed the order prescribed by the Lords in the case of the town of Inverness, by giving intimation by tuck of drum to the inhabitants, and that the stent-masters did admit of all the oaths of the burgesses who compeared to clear the quantity of their stocks, or profit of their trades ; and there is no ground of fear of arbitrariness, seeing the Magistrates bear stent, and are burdened as the rest.

THE LORDS found, That the Magistrates might stent for the utility of the burgh, but then only upon calling the whole incorporation, and proceeding with the consent of the major part of those who should happen to convene, and observing the order prescribed by the Lords, in the case of the town of Inverness ; and found, that the stent-masters might stent according to their best information and discretion upon their oath, where the burgesses did not compear and make faith upon their stock and profit ; but found no inhabitants could be stent-

\* *Infra et voce* PRESCRIPTION.

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ed, except burgesses exercising trade or merchandise, and that for their tenements and lands within burgh allenary. (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