

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

tradesmen have been in the magistracy here, yet that is *ad arbitrium*; and if this privilege be refused, they may totally exclude the trades from the magistracy.—The defenders *alleged*, That this libel is nowise relevant; for erections of all burghs, being the constituting of an incorporation of a body politic, of merchants and tradesmen, have power to elect Council and Magistrates; and these having elected a Council, the old Council allenary elects the new; and albeit they might erect subordinate incorporations or deaconries, when they see it good for the interest of the burgh; yet that is a privilege granted to them, and cannot be retorted to put a necessity upon them; and if this libel were found relevant, there is not a trade in any town in Scotland but would be inanimated to raise process against their Magistrates, to erect them in deaconries; whereas many towns have no deaconries, and diverse towns have only deacons of diverse kinds of trades, and no other trade can force them to give them a new erection. For instance, the apothecaries in Edinburgh are the most considerable trade in the city, and yet could never obtain a deacon, or power to convene; but the Magistrates appoint overseers as to what concerns the apothecaries. And seeing this town have acquiesced in their constitution, past memory, having only two Bailies, and a Council, chosen indifferently of merchants and tradesmen, whereby the tradesmen have equal interest, and have been chosen, and now are in the Council, and have been Magistrates: And as to unfreemen, the town permits none such; and, any they do receive to be freemen, which were not apprentices, are always tried by visitors of the skilfullest of the trade, chosen by the Magistrates, who also visit the works of their several trades: And as to deaconries, it is known that they have been the original of faction and disturbance in burghs, upon pretence of their authority to meet and make acts of their own, and to influence the elections of the Magistracy, fostering faction and emulation; and though, thereafter, deacons were restored, as having been long in many burghs, yet this gives no ground to set them up where they were not, especially where the trades are so mean and inconsiderable as in this burgh.

THE LORDS found, that every burgh was not obliged to erect deacons of every trade, but only where the good of the town did so require; but the Lords found no conveniency to erect deacons in this town, but appointed the third part of the Council, in all time-coming, to be tradesmen, as a just proportion betwixt the merchants and trades, so ordered by King James in Edinburgh, the chief city, and customary in other burghs, that neither the merchants might exclude the tradesmen, nor the tradesmen the merchants: THE LORDS did also ordain visitors of the several trades to be named every year, to exclude unfreemen, and that the compositions for giving freedom to tradesmen might be equally divided between the town and the trade, who might have a box and box-master; but without any power of convention for making of acts, or exercising jurisdiction.

*Fol. Dic. v. 1. p. 117. Stair, v. 2. p. 698. & 837.*