

' THE LORDS sustained the objection ; and found, that the persons complain-
ed of being under the age 21, could not vote.' See MINOR.

No 12.

Act. *Montgomery et Burnet.*
J. Campbell.

Alt. *M^cQueen et Lockhart.* Clerk, *Pringle.*
Fol. Dic. v. 3. p. 99. Fac. Col. No 14. p. 24.

1776. December 13. FOTHERINGHAM against LANGLANDS.

Two burgesses of Brechin pursued a reduction of an election of the deacon and treasurer of the hammermen, and declarator that they themselves had been elected by a fair majority to those offices ; and, in support of the plea, urged the immemorial usage of the burgh, by which the same person might be a member of different corporations ; thus it was *alleged*, That a slater and butcher were members of the corporation of glovers ; a weaver, a shoemaker, a wright, and a carter, were members of the corporation of bakers ; and a writer was a member of the corporation of taylors ; and it was urged, that unless this practice were allowed, some of the corporations would be extinct.—THE LORDS were of opinion, That the practice was most irregular, therefore repelled the reasons of reduction, and assolizied from the declarator.

No 13.
Found to be irregular, that the same person should be a member of different corporations.

Fol. Dic. v. 3. p. 99.

1778. August 7.

JOHN DALRYMPLE, and Others, against JAMES STODART, and Others.

THERE are 14 incorporations in the town of Edinburgh, who have each a deacon chosen annually by the craftsmen. Out of these deacons, six are chosen by the old council into the new, and vote in all questions as a part of it. The other eight, who are called extraordinary deacons, have only a vote in electing the magistrates, and certain other matters.

The incorporations, in electing their deacons, are each obliged to give in a leet of six persons to the town-council, from which a leet of three is sent back to them by the council, out of which the deacon must be chosen.

This restraint on the freedom of their choice had, on former occasions, been complained of as a grievance. In 1777, Mr Stodart, then a counsellor, moved in council, ' That the magistrates and town-council should make an application to the Convention of the royal burghs, to alter, by their authority, this part of the set ; and to declare, that each incorporation of the city shall be at liberty to elect a deacon yearly, in time coming, from any of their own freemen, in a free election, without any controul by having their leets shortened by the town-council.'

No 14.
The Convention has no power to make alterations on the set of a burgh. See No 4. p. 1839.

No 14.

This motion was opposed by the Lord Provost, and others of the ordinary council; but the eight extraordinary deacons insisting for a vote, it was carried by a majority of five.

In a suspension of this proceeding, at the instance of the Lord Provost and others,

Pleaded for the suspenders, *imo*, The extraordinary deacons have no title to vote in council, except in certain cases, specified in the decret-arbitral of King James VI. 1583, and again in that of Lord Ilay in 1730.—As the matter of Mr Stodart's motion falls not under any of these excepted cases, the eight deacons had no vote, consequently the majority of the council was against the motion.

2do, The Convention of the royal burghs have no powers to make any innovation on the established set of a burgh. When once the constitution of any corporation is established, the rights arising therefrom to the merchants, crafts, and all concerned, are as inviolable as rights of private property; *Incorp. of Glasgow, 15th February 1775**.—Nothing less than a parliamentary power can take away, or alter, the rights so vested. Courts of justice must support them.

The Convention has no such parliamentary powers. What were the powers of the great chamberlain, when that officer was at the head of the burghs, are little known. But there is no evidence that ever they extended to the giving, or altering, the set of a burgh.—The Convention was established by Parliament; and all its powers are derived from the acts 1487, c. 107. 1578, c. 64. and 1581, c. 119.—The authority given to it by these statutes, is merely that of making regulations relative to commerce, and attending to what concerns the general benefit of the burghs.

As to the powers which the Convention, in practice, exercises, it is true, that old sets have been altered by the Convention, in cases where there was either a submission, or a surrender, by all parties having interest. How far they have authority to pronounce such decreets-arbitral in these cases, it is unnecessary to consider: For, if any party having interest objects, the Convention does not assume, nor pretend to the power, of making any alteration on the set. They decline themselves in such cases, as appears from their records; Magistrates of Aberdeen, 15th June 1590; Perth, August 1652.

Answered for the chargers, to the *1st* reason of suspension: The extraordinary deacons are proper parties to every measure concerning an alteration in the set of the burgh. They were parties to the submissions to King James VI. and to Lord Ilay, in both of which similar questions were agitated.

To the *second* reason of suspension: It is premature. Any objection to the powers of Convention, ought first to be made in the Convention itself, when the question is brought before them.

It is likewise groundless. The great chamberlain anciently possessed a supreme jurisdiction, and extensive powers, in superintending the police of the burghs.—In his court of four burghs, he reviewed the sentences of inferior

* Not reported.

burgh jurisdictions. No appeal lay to Parliament from their judgment; M. T. C. B. c. 17. There is no certain evidence where the sets of the burghs originated. In none of the ancient charters of these burghs, extant, are there any traces of a set. It is highly probable, however, that they proceeded from the chamberlain-court; though instances cannot be given, as the records of the court are lost.

No 14.

The Convention came in place of the chamberlain, as to the superintendence of the burghs.—By the act 1487, the Convention is ordained to meet, ‘with full commission to commune and treat upon the welfare of merchandize, the gude rule and statutes for the common profite of burghs.’ These words are sufficient to imply a power of giving new sets to burghs, and altering old sets; and are explained to have had that meaning by usage. The Convention, ever since, have exercised these powers, as appears from the records; particularly in the cases of Dumfermline, in 1618; Elgin, 1705; Inverness, 1676; Wick, 1708; Inverkeithing, 1741; Glasgow, 1748; Kinghorn, 1769. The powers of the Convention to alter sets were expressly recognised by the Court of Session in the case of Inverness, 11th February 1724, Edgar, No. 4. p. 1839.

Replied for the suspenders: In the instances adduced, where the Convention altered the set; there was either a submission by all parties concerned, or a general consent. The judgment of the Court, in the case of Inverness, does not apply. All that the Court found was, that the Convention could make alterations in a set formerly given by the Convention itself, which was the case of the set of Inverness.

The COURT were of opinion, That the convention had no powers to alter the set of the burgh; and that this was a competent ground of suspension.

‘The COURT sustained the reasons of suspension;’ and adhered, on advising a reclaiming petition and answers.

Act. *Crosbie, Rae.*Alt. *Advocate, Ilay Campbell, M^r Laurin.**Fol. Dic. v. 3. p. 100. Fac. Col. No 43. p. 75.*

1782. July 24.

WILLIAM CHALMER of Easter Dalry, Deacon of the Incorporation of Surgeons, against The LORD PROVOST, MAGISTRATES, and TOWN-COUNCIL, of the City of Edinburgh.

UPON 15th September 1781, Mr Chalmer was unanimously elected deacon of the surgeons, had the oath *de fidei* administered to him, and entered into possession of the office. Upon the following Wednesday, being 19th September, the deacons of the different incorporations were, agreeable to the set and usage of the burgh, presented to the town-council; and such of them as were present, had the oaths of counsellors, and the oaths to government, administered to

No 15.

The presenting and receiving of deacons in council, was found not requisite, by the set of the burgh of Edinburgh.