

1800. *December 3.*

PATRICK CUNNINGHAME, *against* The MAGISTRATES and TOWN-COUNCIL
of EDINBURGH.

No. 7.

A bill of suspension and interdict at the instance of an individual member of a Town-Council, complaining of an act of the Council, appointing an additional minister within the burgh, on the ground that its revenue was not in a situation to pay his stipend, held to be incompetent.

THE Magistrates and Town-Council of Edinburgh having resolved to make St. Andrew's Church a collegiate charge, appointed the Reverend David Ritchie to be junior minister, with a stipend of £.200 yearly.

Patrick Cunninghame, then a member of the Town-Council, complained of this resolution by a bill of suspension and interdict, in which he stated, that the expenditure of the City already exceeded its revenues; that the appointment would at all times have been unnecessary, and was peculiarly improper under the present circumstances.

The Town-Council defended the measure on grounds of expediency.

The Lord Ordinary took the case to report.

On advising memorials, the Court thought the measure expedient. But they further thought, that the complaint was incompetent. This Court, (it was observed), in a proper action brought for that purpose, will controul Magistrates in the expenditure of the revenue, when special acts of malversation are charged against them; see No. 94. p. 7366; but they have no power, in this summary form, to recal or prohibit an appointment made by a corporate body, in which a third party has a *jus quasitum*, on vague allegations that the revenue is insufficient for its support.

The Lords unanimously refused the bill, and found the complainer liable in expenses.

Lord Ordinary, *Cullen.* For Cunninghame, *Jo. Clerk.* Alt. Lord Advocate *Hope.*
R. D. *Fac. Coll. (APPENDIX,) No. 10. p. 19.*

1801. *February 25.*

ALEXANDER MARTIN and Others, *against* The MAGISTRATES of ABERDEEN.

No. 8.

Upon a change in the form in which an article, subject to custom, is sold within a royal burgh, the Magistrates are entitled to levy the duty from it in its new shape.

THE Magistrates of Aberdeen were accustomed to levy weigh-house dues on the tallow sold by the butchers within the burgh, when they sold it privately, as well as when they exposed it in the public market, and had it weighed in the public weigh-house.

By a table, published by the Magistrates in 1777, it is declared, That "all tallow, butter and cheese, brought to the market for sale, are liable in pay-

" said duties from any other persons than such as had previously thereto been accustomed to pay the same; or in any other cases of buying and selling, than those in which they had previously thereto been accustomed rightfully to receive the same: And it is further ordered and adjudged, That the said cause be remitted back to the Court of Session in Scotland, to review their judgment respecting the letters of suspension and the conclusion of the declarator."