

No 49.

suspends upon this reason, That she being a burghess' wife of the King's burgh royal, and still residenter there, as the pursuer also was, and a burghess of that town, she could not be convened but before the provost and bailies of their own burgh, they being both *conceives*, and the Sheriff was not judge to her, nor she holden to answer to that court. This reason was not respected, but the letters were found orderly proceeded notwithstanding thereof; in respect the LORDS found, That the burghesses of burghs royal might be convened by con-burghesses before the Sheriff, as well as before their own magistrates of burgh, albeit the burghs were also sheriffs within themselves; for they were not privative, but cumulative judges.

Upon the last day of March 1636, this was controverted in a cause betwixt Coutts and Coutts, cook in Edinburgh, where the master being pursued by the servant for his fees, before the Sheriff of Edinburgh; and the master desiring advocacion, because he was a burghess of Edinburgh, and therefore ought either to be judged in their court, as their burghesses, especially seeing they were sheriffs within themselves, or else advocated to the Lords; which reason the Lords inclined to sustain, but delayed to decide it until June next thereafter.

Clerk, *Gibson*.

*Durie, p. 65e.*

1663. *January 30.*

TOWN OF LINLITHGOW *against* INHABITANTS OF BORROWSTONESS.

No 50.

Burghs-royal may summarily sieze upon staple ware of unfreemen, and judge regarding it; but cannot summarily incarcerate, having the privilege only of charging to find caution.

THE TOWN of Linlithgow having apprehended an inhabitant of Borrowstoness, in their town, being an unfreeman, and exercising the trade of merchandise, they put him in prison; he granted bond to forbear in all time-coming: Likeas they fined him in 100 merks; he suspended, and raised reduction, on this reason, that the bond was extorted, when so far as he was summarily taken, and put in prison, and could not get out till he promised to give the bond, and immediately after he was out, subscribed the same.—The charger *alleged*, There was no unjust force or fear, because, by the acts of Parliament in favour of free burghs, all unfreemen are discharged to exercise the trade of merchandise; whereupon they had obtained decret against the same suspender to desist and cease therefrom. *2dly*, They, and all other free burghs, had immemorially possessed this privilege, to apprehend persons found within their town; and forced them to find caution as law will, upon debt due to any in the town, and, particularly, to put them in prison till they give such bonds in surety as this.—The suspender *answered* to the first, There was no such warrant by the act of Parliament, but only to charge, with general letters, unfreemen to find caution; and for the privilege of burghs, to arrest unfree persons within their towns, it is only in case of debts, and other merchandises, due to burghesses, but cannot be

extended to this case, where there is a special order set down by act of Parliament.

No 50.

THE LORDS found that the burghs-royal (might seize) summarily upon staple ware of unfreemen, and might judge thereanent; but not summarily incarcerate their persons, but only to charge them; and found their custom and privilege not to extend to this case; and, therefore, found the reason of reduction relevant.

*Fol. Dic. v. 1. p. 119. Stair, v. 1. p. 165.*

1664. June 24. TOWN of CUPAR against TOWN of KINNOOTHY.

THE town of Cupar having charged the town of Kinnothy to desist from merchant trade, they suspend and *allege*, That they have the privilege of burgh of barony, in keeping hostlers and selling wine.—The charger *answered*, That selling of wine is one of their chiefest and express privileges.

THE LORDS, considering that this dipped upon the controversy betwixt burgh royal and burgh of barony, which has remained undecided these thirty years, would not discuss this particular; but found the letters orderly proceeded in general, ay and while the defenders found caution to desist from merchant trade, without determining how far that reached. *See BURGH of BARONY.*

*Stair, v. 1. p. 204.*

No 51.

A burgh royal was found entitled to charge a burgh of barony, to find caution to desist from merchant trade.

1669. July 21.

TOWN of PERTH against The WEAVERS of the BRIDGE-END of PERTH.

THE town of Perth pursues the weavers at the Bridge-end of Perth, either to desist from weaving in their suburbs, or otherwise to pay a duty, accustomed to be paid by the weavers there, to the town, for that liberty, conform to the several tickets produced, and that conform to the 156th act, Parliament 1592, entitled, *The Exercise of Crafts within Suburbs adjacent to Burghs forbidden*.—It was *alleged* for the defenders, and Sir George Hay, their master, absolutor, because the said act of Parliament has been in continual disuetude, and was never in use. *2dly*, Though it were yet effectual, yet it can only be understood of such suburbs as have no privileges; but, where the suburbs are contained in any burgh of regality or barony, or within any barony having no burgh, the privileges of these erections warrants the exercise of all craftsmen; so that these websters living within the barony of Pitcullen, cannot be, upon that pretence, hindered from exercising their trade.—The pursuer *answered*, That he opposed the act of Parliament being general; and that it was a standing law unrepealed; and that the obligations of the weavers living there, to pay a duty for their liberty of weaving, did preserve the act in vigour, at least as to this burgh.—The defenders *answered*, That these weavers being in no incorporation, the tickets

No 52.

The act for prohibiting crafts within suburbs adjacent to burghs, found not to apply where these suburbs are within a barony.