

No 145.
exact so
much for
the Sheriffs-
gloves.

of man. It was *alleged*, There was nothing produced to make the defenders liable in payment of the Sheriff-gloves; and use of payment is not relevant to make liable, except the pursuer would condescend that he had right to the Sheriff-gloves.—THE LORDS repelled the defence, and sustained process for the Sheriff-gloves, the pursuer always proving his immemorial possession. See No 149. p. 10892.

Fol. Dic. v. 2. p. 110. Newbyth, MS. p. 37.

1666. February 10.

No 146.

The MINISTER of NORTH LEITH *against* MERCHANTS of EDINBURGH.

THE Minister of North Leith having pursued some Merchants in Edinburgh, importers of herring, of dry fish, killing, and ling, at Leith and Newhaven, to pay 20 shillings of the last of herring, and the 20th part of the killing and ling; it being *alleged*, That such a burden could not be allowable, because the teinds were taken where the fish was taken; *2dly*, That it could only reach the parishoners of North Leith, not the merchants of Edinburgh; and, *3dly*, That they had frequently traded free of such a burden.

THE LORDS having ordained the pursuer to adduce evidences by writ or witnesses, what possession they had, and the defenders what liberty they had; and having heard the testimonies of the witnesses, with an old decret for the same particulars, but not against the merchants of Edinburgh, nor for dry fish, they found 40 years possession proven of the said burden, and therefore decerned.

Fol. Dic. v. 2. p. 110. Stair, v. 1. p. 354.

1668. July 22. JOHN BOSWELL *against* The TOWN of KIRKCALDY.

No 147.
A proprietor
of burgh
acres found
liable on ac-
count of im-
memorial
usage, to pay
stipend to a
second mini-
ster, although
he paid his
whole teind
to the first.

JOHN BOSWELL having some acres in the town's lands of Kirkcaldy, and some houses in the town, but not dwelling within the town, or parish, nor using any trade therein; pursues the town as having unwarrantably stented him for his stock and trade, he not dwelling in their burgh; *2dly*, For unequal stenting him as to his lands; *3dly*, For stenting him for the town's debts, as for the sums paid for their erecting harbours, and some teinds they bought; *4thly*, For stenting him for the second minister's stipend, whereas he paid the whole teind to the first minister, nor dwelt he in the parish, nor consented to a second minister, or to his stipend, and for unwarrantable quartering on him and his tenants, and this since the year 1644. It was *answered* for the defenders, That they denied stenting of the pursuer, for any stock or trade, seeing he was no inhabitant; or that they quartered on him unwarrantably; but *alleged* there was now no ground after so long a time, to quarrel the inequality of their stent rolls, which were made by 15 sworn men, especially after so long a time; for

this preparative would be the foundation of a debate, at the instance of every burgh, against every town in Scotland; neither could there be a clear rule, as in valuations, but behoved to proceed by the stenter's conjecture, according to the common esteem of the means and trade of every burgh; so that unless the complaint were against the inability of the stenters, in due time made, there could be no debate thereafter; and further *alleged*, That for the Town's debts, that such as were contracted for the common benefit of the Town, for getting their erection, and harbour; and for the second minister's stipend, the half of which had been paid by the whole heritors since the year 1613, and the other half since the year 1649 that their new kirk was erected, should burden the pursuer proportionally, according to his land rent. The pursuer *answered*, That he not being an inhabitant, was not concerned in the erection or harbour, nor in the second minister's stipend, seeing he paid his whole teind to the first minister.

THE LORDS found the pursuer liable for the half of the stipend, in regard of the immemorial use of payment, but found him free for what he had not paid of the other, unless it had been imposed by authority, or his own consent; and also found him free of the personal debt, and would not sustain process against the inequality of the stent roll after so long a time.

1669. *February 1.*—THE TOWN of Kirkcaldy having given in a bill to stop the interlocutor of the 22d of July 1668, of the process against them, and having objected against that article of the libel, whereby John Boswell craved repetition of what he was stented for, for charges of commissions to the convention of burghs, upon this ground, that the convention of burghs was authorised by acts of Parliament, and commissioners are ordained to meet yearly thereat, which being a burden arising from the authority of Parliament, those who have tenements in the town, or lands in the burgh's lands, are liable *pro rata*; and did again resume the debate anent the second minister's stipend; and being heard thereupon *in presentia*;

THE LORDS adhered to their former interlocutor anent the teinds, and found nothing could make John Boswell liable for any part of the second minister's stipend, except what was due by law out of his teinds, or what was due by his own consent, or by custom of 40 years, and found him not liable for charges of commissioners of burghs, which though authorised by Parliament, yet the intent thereof was trading; and though the convention might equalise the proportion of taxations amongst burghs, which did concern all having land therein; yet that being a case merely contingent, they would not, upon consideration thereof, put any part of the burden upon those who had no trade.

Fol. Dic. v. 2. p. 110. Stair, v. 1. p. 558. & 595.

* * * Gosford reports this case :

No 147. 1668. *July 22.*—JOHN BOSWELL having a tenement and some acres of land in Kirkcaldy, did intent action against the Magistrates for repetition of some impositions laid upon his land more than was due ; and particularly, for payment of a proportion of the stipend given to a second minister, for which they had stented his lands in relation to the whole stipend ;—whereas, at first, the half of the stipend was only to be paid by the burgh, and the other half by the landward parish ; but there being a new kirk erected for the landward, that half paid to the Town minister by them was settled upon the minister of the new kirk ; whereupon the Town did impose the same upon their own incorporation.—THE LORDS found, that the Magistrates had no power to impose such a stent, albeit for a pious use, unless the heritors on whose lands it was, imposed, or made voluntary payment.—*See BURGH ROYAL.*

Gosford, MS. No 44. p. 16.

1669. *July 21.* TOWN of PERTH *against* WEAVERS of the BRIDGE-END of Perth.

No 148. THE act 156th, Parl. 1592, entituled, “The exercise of crafts within suburbs adjacent to burghs, forbidden,” does not extend to suburbs which are within a regality or barony ; yet a royal-burgh having been in immemorial custom of levying a duty from craftsmen, exercising their trade in a suburb within a barony, insisted they had a right to continue the exaction by the positive prescription. *Answered,* The craftsmen were no incorporation, and the duty paid by any of them could hurt none but themselves ; which the LORDS sustained, and decerned only against those who had been in use of payment.

Fol. Dic. v. 2. p. 109. Stair. Gosford.

* * * This case is No 52. p. 1905. *voce* BURGH ROYAL.

No 149.
Found in conformity to Douglas *against* Town of Jedburgh, No 145. p. 1589. that 40 years possession gave right to a Sheriff to ride a fair, and to exact so much for gloves, and for the best staig in the fair.

1672. *July 11.* EARL of CALLENDER *against* TOWN of STIRLING.

THE Earl of Callender being infest in the heritable office of Sheriffship of Stirling, pursues a declarator against the Town, that he hath right to ride their fairs, and to exact so much for the Sheriff-gloves, and for the price of the best staig in the fair. The defenders *alleged* absolvitor, because the Earl was not infest in any such duties ; and albeit he or his authors had been in possession thereof, it could only be understood in way of gratification, to be continued no longer than the burgh pleased, and if it were otherways exacted, it was unwarrantable ; neither can the pursuer pretend prescription by 40 years possession before this pursuit, because he hath been long out of possession. The