

*Answered*: This statute does not require that the meeting should be *held*; but only that it should be *called* within two days from the receipt of the precept, the object of the enactment being to prevent the chief magistrate from keeping it up arbitrarily. A summons always implies reasonable *induciae*.

No 35.

The Court were of this opinion, and unanimously dismissed the complaint.

Act. H. Erskine.

Alt. D. Williamson.

Clerk, Pringle.

*Fac. Col. No 37. p. 83.*


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— against Commissary SMOLLET, Provost of Dumbarton.

There is mentioned at page 1843, and frequently afterwards in No 8. a case said to have been decided in the House of Lords, 19th February 1735.—The Editor has not been able to find it, either in the Journals of the House of Lords, or in the appealed cases sent to the Advocate's Library. It would seem, that Commissary Smollet, who had been elected provost of Dumbarton, had been objected to as a country gentleman, and non-resident. The Court of Session had annulled the election, but the House of Lords had sustained it; because usage had prevailed so far against the statutes, as to put the town in *bona fide* to elect a stranger their provost; consequently, this particular election ought to be sustained, the full effect, for the future, of the statutes being reserved.

See APPENDIX.

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## S E C T. IV.

## Who liable to Burgal Services and Prestations.

1669. February 1. BOSWALL against TOWN of KIRKALDY.

JOHN BOSWALL being stented by the town of Kirkaldy for some tenements and acres, to pay a proportional part of a second minister's stipend; as likewise of the charges of the Commissioners of that burgh to the Convention of burghs. —THE LORDS found, That he could not be liable at all to the charges for keeping the Convention of burghs, neither for any part of the second minister's stipend, unless the town could prove, that to his knowledge he or his tenants had paid the same yearly past memory of man.

*Fol. Dic. v. 1. p. 117. Gosford, MS. p. 99.*

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No 36.

An heritor of burgh lands not residing within the burgh, was found not liable to the stent for the second minister's stipend, nor for the charges of sending commissioners to the Convention.

1672. February 14. FORBES against The TOWN of INVERNESS.

FORBES of Culloden, and other feuers of Inverness, pursue the town for imposing unwarrantable stents, not authorised by Parliament, and that upon them who were not inhabitants, but feuers of the town-lands, for their ministers stipends, reparation of the bridge, and for processes against the pursuers themselves, and that the stents were most unequal, and that they had proceeded contrary to the Lords sentence formerly pronounced, whereby they declared, that no voluntary stent should be imposed without authority of Parliament, till public intimation were made, and beating of drums, calling the whole inhabitants to show the cause of the imposition, and that it was for the good of the town;

No 37.

The formalities requisite in ascertaining and imposing stent.

- No 37. and that they might also object against the stent-masters, and that the stent-roll should remain four days in the clerk's hands, that they might see their proportion, and complain if they were unequally stented. In which process, contrary instruments were produced for the parties, for clearing the order prescribed by the Lords; to neither of which the LORDS gave credit, but before answer, ordained mutual probation to be anent the manner of the laying on of these stents, and ordain the town to condescend what their town's common-good was, and how it was exhausted; but superceded to give answer to the inequality of the stent, till by this probation it might appear, whether the order prescribed by the Lords was observed by the stent; for if that was, they inclined not to consider the inequality of the stent, being by sworn stent-masters, unless a just objection had been proposed to the town in due time.

*Stair, v. 2. p. 69.*

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- No 38. 1677. January 16. A. against B.

THE LORDS found, That a burges of the town, though he be not *incola*, if he trade, may be stented for payment of his Majesty's taxation.

*Fol. Dic. v. 1. p. 118. Dirleton, No 430. p. 212.*

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1678. February 22.

The MAGISTRATES and TREASURER of Aberdeen, *against* SUNDRY INHABITANTS thereof.

No 39.  
No inhabitants can be stented except burgeses exercising trade or merchandise, and that only for their lands and tenements within burgh.

THIS was a reduction of a stent imposed by the said town for their annualrents, their stipends, and their excise, *imo*, Because they had not followed the method prescribed by the Lords, between Inverness and Culloden, No 37. by tuck, &c. but only by a hand-bill and advertisement on 24 hours, nor was the necessity of it shown, nor the town books made patent: *2do*, Many of them were not liable, because neither merchants nor tradesmen.—THE LORDS repelled the first, in respect of the act of the town council, which bore it to have been legally and formally done; and found that could not be taken away but by the oath of the magistrates, or other *membra curiæ*; and sustained the bill, as the usual way of intimation in that burgh; found none, by the acts of Parliament, liable to pay the taxation, but only traffickers, merchants, or tenants, yea not the sons of burgers, who had always resided in their town, except in so far as they were heritors; and that such were not so much as liable for kirk stipends or the King's excise; albeit it was urged, that all who have the benefit of kirk and market should pay these, if they brew ale for their own use, and go to sermons. (*See* This case, Sec. 2. p. 1866.)

*Fol. Dic. v. 1. p. 118. Fountainball, MS.*