

*should name the Magistrates yearly*: Which necessarily imports, that the whole Magistrates and whole Council must be changed yearly, otherwise the old Council may elect themselves to be the new, or alter only a member or two; but the act bears, *That the Council and whole officers shall be changed yearly.*

No 3.

THE LORDS repelled the defence of desuetude and prescription, and found the statutes founded on, not concerning private right, but the public good of the kingdom, to stand in vigour; and, therefore, ordained the old Council, yearly, at Michaelmas, to choose a new Council; but found, that it did not import that every person in the Council should be changed, but that the major part, at least, should be changed, viz. *seven merchants and four tradesmen*; and that these two Councils, with the deacons of the trades that were already constitute in deaconries, should elect the Provost and Bailies, Dean of Guild, Treasurer, and all officers within burgh, comprehending the overseers and masters of the hospital; but that no person should continue to be Provost, Bailie, Treasurer, Dean of Guild, or other officers within burgh, except counsellors, more than two years; and that all the common good of the town and hospital should be set yearly by roup. See COMMUNITY.

*Fol. Dic. v. 1. p. 117. Stair, v. 2. p. 844.*

1724. February .

The TRADES and MAGISTRATES of Inverness, *against DUFF* of Drummuir and Others, Members of the Guildry.

A COMMITTEE of the royal burghs, by appointment of the convention *anno* 1676, confirmed a set and constitution of the burgh of Inverness, or made a new one, by which the trades were totally excluded from being members of the town council, and in consequence from any share of the management of the burgh.

The trades continued in this state till betwixt the year 1689 and the year 1701, during which interval the magistrates began, *via facti*, to bring some tradesmen into the council; but this having been discontinued from the last-mentioned period, the trades, in the month of June 1722, made application to the magistrates and council for redress of this grievance, and obtained an act of council giving them a certain share of the administration, provisionally always, That what the magistrates and council had done should be authorised and approved of by the convention at their next meeting.

The act of council was accordingly laid before the royal burghs in the month of July thereafter, and received their approbation.

The guildry of the town being dissatisfied with this procedure, suspended both acts; and, amongst other reasons, *insisted* upon this, That the convention had no power by law to alter the constitution of any burgh; that when the royal grant erecting a burgh did not appear, in such a case the forms which had

No 4.

The Convention of Royal Burghs was found entitled to make an alteration in the set of a burgh. See No 6. p. 1840.

The contrary was found in a subsequent case, *infra*.

No 4.

been customary in the town were presumed to be the set, and were usually confirmed by the convention, as was done in the present case.

It was *answered*, That the powers of the convention were ascertained by the laws and acts of Parliament establishing their authority, which were numerous and known; and their possession of these powers, by the exercise of them, appeared from their acts for ages past, giving sets to the greatest part of the royal burghs in the nation, and altering them for just and necessary causes.

It was *observed* likewise for the chargers, That in the present question it seemed extremely odd, that the suspenders should dispute the authority of the convention, since the only title they pretend to, in support of their privileges, was an act of the commissioners of the convention.

THE LORDS found, That the convention of the royal burghs had power, on just and reasonable considerations, to make alterations, upon due and regular application, in the sets of particular burghs, formerly given them by the convention.

Reporter, *Lord Cowper.*

For the Trades, *Dun. Forbes & Jo. Forbes.*

*Alt. Ro. Dundas Advocatus & Ja. Graham.*

Clerk, *Mackenzie.*

*Fol. Dic. v. 3. p. 100. Edgar, p. 29.*

1736. February 26.

TRADES of the Burgh of Dumfries *against* THE MAGISTRATES and TOWN COUNCIL.

No 5.

THE acts of Parliament providing, that officers in burghs shall be traffickers, concern only the office bearers, not the counsellors.

*Fol. Dic. v. 1. p. 117.*

1745. January 29.

MR JOHN CUNNINGHAM Provost, and Others, Magistrates of Inverkeithing, *against* SIR ROBERT HENDERSON Provost, and Others, Magistrates of Inverkeithing.

No 6.

The Court approved of an alteration in the set of a burgh, made by the Convention of Royal Burghs.

THE set of the burgh of Inverkeithing consisted of a provost, two bailies, a dean of guild, and ten burgesses at the least, making fifteen counsellors. The counsellors were for life, unless they demitted; and there being no representation of the trades in council, an application was made to the convention of royal burghs, in the year 1742, who appointed the deacons of the five incorporations, to wit, hammermen, weavers, baxters, taylors, and shoemakers, to be counsellors