

ratione officii, and that these deacons should be chosen in manner, and conform to the set of the burgh of Culross.

No 6.

The day for electing the deacons is the 25th of September, and on the 29th is the election of the magistrates.

At Michaelmas 1744, as there was a dispute betwixt two parties in the town, one headed by Mr John Cunningham younger of Balbougie advocate, the last year's provost, and the other by Sir Robert Henderson of Fordel, who was chosen provost at this time by his side; the old deacons were hindered coming to council by Sir Robert's friends, because being counsellors *ex officio*, they ceast to be so by the expiration of their office.

THE LORDS, at advising a petition and complaint, presented by Mr Cunningham against the election of Sir Robert, were of opinion, That by the determination of the royal burghs, which neither party inclined to set aside, the trades ought never to be unrepresented in council; and therefore the old deacons had right to sit, at least till the new were received.

This was the purport of their interlocutor; to which, on a reclaiming bill, they adhered.

A.& W. Grant.

Alt. Graham jun.

Clerk, Hall.

Fol. Dic. v. 3. p. 100. D. Falconer, v. 1. p. 60.

1747. February 20.

The BURGESSES of Rutherglen *against* ANDREW LEITCH.

IN a process, wherein the election of magistrates and counsellors for the burgh of Rutherglen at Michaelmas 1746, was disputed, the question turning on the validity of the votes of certain coaliers, who were burgesses of the town, and who had concurred with the other incorporated burgesses to make a leet of eight, out of which four behoved to be chosen by the magistrates to be upon the council; it was *objected*, That the right of election ought not to be committed to persons so much dependent as coaliers were, whose masters had a right to their service, and could detain them from attending any election; could commit them to a private prison; and who were so little freemen, as to be an exception to the act against wrongous imprisonment, which is the security of the liberty of the subject.

Answered, There is no state of slavery with us; and a man's dependence as a servant, will not take from him a right otherwise competent; although in fact a coalier may be detained from an election, yet if he is present, he must be allowed to vote; and perhaps his master, who would arbitrarily hinder him, may be compelled by order of law to allow him to go. Coaliers are capable of property; and if one of them were possess of a freehold, he would surely be allowed to vote for a member of Parliament.

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No 7.

The Lords repelled the objection to coaliers, burgesses of a town, voting in the election of its magistrates, that they were slaves, and under influence.

No 7.

One of the Lords declared he thought this might be a reason of reducing their burgh tickets ; but as they were in possession of all the other rights of burghesses, their votes, while they continued so, behoved to be sustained.

THE LORDS, 15th January, Found the whole of the incorporated burghesses, whether coaliers or not, entitled to vote and poll in leeting Eight ; and repelled the objection to the coaliers' votes : And, on bill and answers, adhered.

A&t. Arch. Hamilton & W. Grant. Alt. J. Graham & Maitland. Clerk, Forbes.
Fol. Dic. v. 3. p. 99. D. Falconer, v. 1. No 171. p. 228.

1749. February 17.

No 8.

JAMES ANDERSON and other BURGESSES of Wick *against* MAGISTRATES.

None but those who are resident can be elected bailies ; but it is not necessary that the provost, or any of the counsellors, be resident burghesses.

THE TOWN of Wick was erected into a royal burgh by a charter from the Crown, *anno* 1589, containing regulations for electing the magistrates and council, in the following words : ‘ Cum speciali et plenaria potestate liberis inhabitantibus et burgensibus dicti burgi, et suis successoribus in futurum, cum expresso avisamento et consensu dicti nostri consanguinei *Georgii* Comitis de *Caithnes* et ejus hæredum et successorum, et non aliter, seu alio modo, præpositum et quatuor bailivos, dicti burgi incolas seu inhabitatores, una cum thesaurario, gildæ-decano, consulibus, burgensibus, serjeandis, aliisque officariis necessariis, intra dictum burgum, pro gubernatione ejusdem, faciendi, eligendi, constituendi, et creandi, eosque toties quoties expediens videbitur, pro causis rationalibus deponendi.’

Certain burghesses of the town finding a deviation from the charter in the later practice, and new regulations established by a set of the town made by the royal burghs *anno* 1716 ; and apprehending that this set tended to establish a foreign interest within the town, brought a process of declarator, for asserting the independency of their town, and for restoring their form of government to its original standard. The conclusions of the declarator are : *1mo*, In general, That the charter of erection 1589 containing regulations for electing the magistrates and town council, ought to be found and declared the rule, and that the set made by the royal burghs, *anno* 1716, ought to be declared of no force, so far as it differs from the charter. *2do*, In particular, That no person should be entitled to elect or be elected a magistrate or counsellor but burghesses and inhabitants, in terms of the charter.

The *answer* to the *first* conclusion was, That the old form of popular elections, universal in Scotland, was justly altered by the act 29th, Parliament 1469, because of the difficulties and confusion attending such elections ; an aristocratical form of election being introduced in place of the democratical, by appointing the old council to chuse the new : That the charter 1589, though granted long after the alteration, was probably made out by inadvertency in the old stile :