

BURGH OF BARONY.

1623. July 19.

SALMOND *against* LINDSAY.

IN a suspension, Salmond *contra* Duncan Lindsay, the LORDS found a decret given by the Bailies of Leith, against one who became cautioner for another person, who was arrested by the said Bailies, to answer for him as law will, to be null, summarily by way of suspension, because the Bailies of Leith were but Bailies of a burgh of barony; and the LORDS found, That the privilege to arrest or incarcerate any person, while caution was found to answer as law will by them, was only introduced in favour of burgesses of free burghs royal, whose magistrates might only do the same, and that that privilege was not competent to any burgh of barony, or any other magistrate in other places, which were not erected with the privileges of burghs royal. See BURGH ROYAL.

Durie, p. 75.

No 1.

Found, the magistrates of a burgh of barony had no power to incarcerate till caution be found.

1630. February 4. TOWN of EDINBURGH *against* TOWN of LEITH.

IN a suspension of charges, executed against the town of Leith, for selling and tapping out of wine in small, contrary to the tenor of the act of Parliament, James IV. Parliament 6th, made in favour of royal burghs, which prohibits the same:—THE LORDS sustained the charges upon that act, albeit it was alleged, that it was past in disuetude, and a constant contrary consuetude observed, and that it was a prejudicial act to the commonwealth, to prohibit the selling of wine and other vivers in land-ward, claugh-lands, and burghs of barony, and other villages where the King's lieges do repair and lodge; seeing it is also commanded by act of Parliament, James V. Parliament 4th, That all villages be well furnished with provision for lodging of the King's subjects. Notwithstanding whereof the charges were sustained, for this reason, viz. not only in respect of the privilege of burghs royal, but also because Edinburgh was baron of Leith, and the inhabitants within the barony ought to have liberty of their superior for

No 2.

A burgh of barony found to have no right to sell or tap wine; a privilege competent only to royal burghs.

No 2. selling of such furniture ; and also there were divers decreets *in foro contentioso* betwixt these parties upon the same subjects.

Aft. Nicolson & Stewart.

Alt. Aiton, Mowat & Craig.

Clerk, Gibson,

Durie, p. 489.

1677. November 22.

The FLESHERS of the CANONGATE *against* The TOWN of EDINBURGH.

No 3.

A burgh of barony was erected in a baron's charter, with the incorporation of several trades. These were found entitled to make laws for themselves, without prejudice to the baron's acts ; who might appoint visitors, but could not fine.

THE town of Edinburgh did, by an act of council, appoint their cordiners and skinners, to visit the skins and hydes of beasts slain in the Canongate, or brought in to the market, and to punish those who had the same holled or tarleathered : Whereupon some of the fleshers in the Canongate were fined and imprisoned, and gave in a bill of suspension ; upon which the LORDS ordained the cause to be discust ; and *alleged*, That the Canongate is a burgh of regality, erected by the King, in the Baron of Broughton's charter, whereby they have the privilege of Bailies and trades ; likeas the Baron of Broughton has, by his seal of cause, produced his privilege to the fleshers of the Canongate, as a free trade and corporation, and hath given them power to make their own acts, to punish transgressors thereof, and to apply the fines to their own box and poor ; and therefore the town, who have succeeded in place of the Baron of Broughton, after these privileges, cannot alter the same ; and though they might appoint a Baron Bailie as the Barons did, yet they cannot appoint visitors with power to fine, especially citizens of Edinburgh, who concur with their neighbours to disquiet the trades of the Canongate, to draw the whole trade to the fleshers of Edinburgh ; which is a public prejudice.

THE LORDS found the privileges granted to the suspenders valid, and that no visitors could punish their transgressions but their Baron Bailie, who might appoint visitors to sight, report, and be witnesses, but not judges ; but would not limit the Bailie in his choice of those in the Canongate ; and found, that the fines imposed by the Bailie, and not by the trade, by their own acts, were not comprehended in their privilege, and so belonged not to their poor.

Stair, v. 2. p. 563.

1732. November 22.

FEUERS of DUNSE *against* HAY of Drummelzier.

No 4.

The nature of a burgh of barony.

A burgh of barony not a good title for acquiring a servitude of pasturage by prescription.

THE village of Dunse, belonging in property to Hume of Aiton, was, by a charter from the Crown, erected into a free burgh of barony, ' with power to the inhabitants to buy and sell, to have markets and public fairs, to have burgesses ' who should chuse their own bailies and other officers : With power to the said ' burgesses and inhabitants, to have and hold the said town of Dunse, with its ' pertinents, for ever in a true and free burgh of barony, with privileges, &c.'