

1752. December 14.

MAGISTRATES of STIRLING *against* Mr. DAVID WALKER, Sheriff of Stirling.

No. 36.

IN a declarator at the instance of the Magistrates of Stirling against the Sheriff, the Lords found that he had done wrong in taking on him to judge in a question of a servitude of stillicide within the Burgh, which they thought was competent in the first instance only to the Dean of Guild; but they waved to give a general declarator as the summons demanded, because no other party but the Sheriff was called, whose commission was during pleasure, and that at least the Officers of State should have been called. (See DICT. No. 302. p. 7584.)

1752. December 15.

TRADES of BURNTISLAND *against* THE MAGISTRATES.

No. 37.

IN a declarator between the Trades and Magistrates of Burntisland, the Lords, in respect of the set of the Burgh in 1708, (recorded by the Royal Burghs in 1710) certifying the custom then, and for 60 or 70 years before, and in respect of the custom since that time, found that any nobleman or gentleman, though no merchant nor resider in the Burgh, might be chosen Provost; and that in that case, he was supernumerary over and above their ordinary council of 21, but if he was a residing trafficker, that then he was one of the 21; and that notwithstanding the acts of Parliament, that officers in Burgh should be residing traffickers, and notwithstanding a decret of Session in 1681, that the Town Council should consist of 21 persons, viz. fourteen residing merchant traffickers and seven trades; and a decret-arbitral in 1727, on a submission signed by one of the Bailies for the Guildry, and the Convener for the Trades; which decret they thought was not binding, because the submission was not signed by the proper parties. They also found that the seven Deacons of Crafts were not *virtute officii* Councillors, but that the Town Council had the election of the seven Trades' Councillors, one out of each Craft.

Whether a non-resident Burgess might be chosen Provost?