

No 30.

indwellers, no such provision has been made as to the other citizens ; and in many instances it has been found, that a non-residing burghess might enjoy the important office of counsellor, when the matter had not been otherwise fixed by the constitution of the burgh. Some determinations which may be resorted to in the case of Edinburgh are not applicable, these having been given in consequence of the peculiar set of that town, as regulated by a decret-arbitral pronounced by Lord Ilay, and confirmed by the subsequent practice : Act 1487, c. 111. ; 1535, c. 26. ; 7th January 1757, Burgesses of Forres *contra* the Magistrates, No 10. p. 1855. ; Burgesses of Wick, No 8. p. 1842. ; 1775, Magistrates of Linlithgow.

Answered : The privileges belonging to burghesses and freemen have not been bestowed on them individually, but as inhabiting a certain territory, and in consideration of their peculiar usefulness to their fellow citizens. As soon, therefore, as a burghess or freeman ceases to reside within the burgh, he is not permitted to exercise any of his former rights. In the election of the town's managers, it would be very inexpedient to give any influence to those who have no longer any interest in the welfare of the community. Hence it has been found, that a non-residing burghess had not the privilege of taking apprentices. In another case it was expressly determined, that a tradesman residing in Canongate could not be elected a deacon in the town of Edinburgh ; and this was held to be law in a subsequent question ; 1st December 1738, Macduff, (*infra*) ; 31st January 1764, Millar *contra* Nicolson (not reported) ; James Hunter Blair *contra* Phin, No 27. p. 1885.

' THE LORDS dismissed the complaint.*

For the Complainers, *Alex. Fergusson, C. Hay, et alii.*
Craigie.

Alt. Hope, et alii.

Fol. Dic. v. 3. p. 101. Fac. Col. No 81. p. 146.

1789. July 29.

JAMES DONALDSON and Others, *against* The MAGISTRATES of Kinghorn.

No 31.
In a complaint with regard to the election of a deacon, it is necessary to summon only the Magistrates and Council, not the members of the particular corporation.

JAMES DONALDSON, who had been chosen deacon of the bakers in the town of Kinghorn in September 1788, complained to the Court of Session, in terms of the statutes 16th Geo. II. and 14th Geo. III. that he had been prevented from voting in the election of the magistrates for the ensuing year.

To this complaint the provost, bailies, and other members of the town council, were made parties, without taking any notice of the members of the corporation of bakers, and also without summoning one Thomson, who, as *old deacon* of the taylors, had been present when the complainer was rejected by the magistrates.

An objection on this ground was stated by the magistrates and town council to the formality of this complaint ; in support of which they

* The same decision was given in a similar question from the town of Kirkaldy.

Pleaded: In every judicial proceeding it is necessary that those who are immediately interested in the decision shall be brought into the field. It is true, that in prescribing the form of summons to be used in matters of burgh election the legislature has required, that 'the magistrates and counsellors elected by the 'majority' shall be cited, without particularly mentioning any other person. But it surely could not be meant by this, where the question was with regard to the election of a particular officer, that the party himself should not be cited; or that every one of those persons whose proceedings have been complained of, should not have regular notice of a litigation, in which, besides being subjected in expences, that may be deprived of their right of suffrage. Accordingly the practice has ever been, not only to summon the magistrates and counsellors, but also those who voted at the election at which the wrong is said to have been committed. And, where the choice of a deacon is the subject of dispute, the whole members of the particular corporation have been made parties.

Answered: The method of summoning, in causes of this sort, has been wisely adapted to the circumstances of the case. By intimation to the magistrates and other members of the town council, it is to be presumed that the matter will be sufficiently known, to put every other person who has, or thinks he has, an interest, on his guard; and this, independently of statutable forms, is all that is necessary. To require, that besides the magistrates and counsellors, who, as representing the community, have the chief, and almost the only concern, the whole constituent members of the meetings for election in all the different corporations should be called, would occasion a great and unnecessary expence; and, at the same time, would almost, in every instance, be fatal to the proceedings, from the danger of omitting some person to whom intimation should have been made. A similar idea has been followed with regard to the proceedings in the courts of freeholders, where, though every one of the freeholders may be thought to have an equal interest, it has been sufficient, to summon the person who is supposed to have been unduly put on the roll, or those by whom an objection has been made, in consequence of which a freeholder has been excluded from his right of voting. As to the practice, supposing it to have been uniform, as it has proceeded from the unnecessary anxiety of the parties, it cannot have any influence; 1st August 1773, Bell *contra* the Magistrates of Inverkeithing.

The complaint was dismissed on other grounds, to be stated in the report which immediately follows: But

THE COURT were of opinion, that the form of the citation had been sufficiently regular.

Act. Dean of Faculty, Wight, A. Fergusson, Cha. Hay. Alt. Lord Advocate, Solicitor, Tait, Hope. Craigie.

Fol. Dic. v. 1. p. 101. Fac. Col. No 82. p. 148.