

No. 72. perform : Besides, the defunct having disposed his estate, did not die a Baron ; and his heir is not entitled to heirship moveables.

The Lords adhered.

Act. *H. Home.*

Alt. *Boswel.*

*D. Falconer, v. 2. No. 68. p. 74.*

1750. July 11. EARL of CASSILIS *against* The TOWN of WIGTON.

No. 73.

A declarator sustained, that the pursuers were not liable in certain tolls for passing through the defenders' grounds.

The Earl of Cassilis and other gentlemen insisted in a declarator against the burgh of Wigton, and other burghs, and against sundry particular heritors, That they were not liable in any tolls for cattle passing through these towns, or by certain roads or bridges leading through their grounds, or those of the other defenders.

Objected : The defenders have grants of tolls ; and the pursuers are insisting in a reduction and improbation of them, which they have no title to pursue ; and they are not bound to produce their rights ; and the declarator libelled, that the pursuer or other lieges are not subject to any tolls, is only a consequence of the improbation. They have no title to pursue this general declarator for the lieges ; and it ought not to be sustained for themselves, as no absolvitor can proceed upon it ; and they are obliging the defenders vexatiously to shew their writings : But if any unjust toll is asked of any in particular, he may in a proper way obtain remedy against it.

Answered : The pursuers do not insist in any conclusion of improbation or general conclusion of declarator, but on their own right of immunity, which is competent to every man ; and there is in the summons a distinct conclusion for that purpose, without any connection with, or dependence upon, the improbation.

The Lords sustained the pursuers' title to pursue the declarator libelled.

Act. *W. Grant & Lockhart.* Alt. *R. Craigie & Haldane.* Reporter, *Justice Clerk.*

*D. Falconer, v. 2. No. 146. p. 172.*

1752. June 30.

ANDERSON and Others *against* The MAGISTRATES of RENFREW.

No. 74.

The citizens of a burgh are entitled to call their Magistrates to account for their administration.

John Anderson and others, burgesses of Renfrew, raised a reduction of a long lease of the common property, which the Magistrates and Town-Council had granted.

The Magistrates and Town-Council objected to the title of the pursuers, and pleaded, That private burgesses cannot compel their Magistrates to render account of their administration. The abuses which may prevail in the management