cient title.—12th January Find the privilege to the Earl of Caithness alienable, and order Ulbster to produce all his titles, and find that a majority of those elected Councillors must be inhabitants; but now altered this last, and found there was no limitation of Councillors to be inhabitants.—13th June Altered by President's casting vote, and found there must be a majority of inhabitants including Bailies or proprietors;—24th June Adhered; and 4th July found of consent that the Dean of Guild and Treasurer must be resident Burgesses.

## No. 30. 1752, Jan. 8, 23. GEEKIE, HAMILTON, and HAY.

HENRY HALIBURTON, writer, as creditor by adjudication on Jackson's land, which was going into disrepair, obtained the Sheriff's warrant for repairing, and declaring these repairs a preferable debt, and Jackson the proprietor consented. Haliburton died before he paid the tradesmen; and these three persons were his heirs-portioners; but Geekie was sole executor; and he paid the tradesmen, took assignations from them, and got the extent of repairs cognosced by the Sheriff; and pursued declarator against his co-heirs, that they should either repay him the two-thirds on his assigning them, or otherwise that he should be preferred for his reimbursement on the tenement; and Kilkerran, Ordinary, found that the repairs made during Haliburton's life were moveable debts that affected his executor, and therefore assoilzied the heir. But on a reclaiming bill we found indeed that the expenses of the repairs were moveable, and affected his executors; but found, that the relief competent to Haliburton of those expenses either against Jackson or out of the rents was also moveable, and descended to his executor; and that therefore the pursuer having paid them, was entitled to be paid out of the first and readiest of the rents of the tenements; for we thought that those expenses were not real nor heritable debts either in the persons of the tradesmen or of Haliburton, if he had paid them,—but that they were personal and moveable,—only by custom within Burgh, they had a privilege of retention till paid, or of being paid out of the first of the rents, because *rem salvam fecerunt*. But if the creditor should neglect that privilege, and suffer the proprietor to possess and dispose of the rents for some considerable time, and afterwards to sell them, the purchaser would not be liable for these repairs.—23d January Adhered.

## No. 31. 1752, June 30. BURGESSES of IRVINE (RENFREW) *against* THE MAGISTRATES.

ANDERSON and others, Heritors and Burgesses of Renfrew, pursued reduction of certain leases of part of the Town's commonty, where the pursuers were wont to pasture for two 19 years, taken by some of the Council for next to an elusory rent as 14 or 16 pence the acre, and the Town obliged to inclose. The Magistrates objected to the pursuers' title; and we all agreed, that if the pursuers had a right of pasturage they had a good title. The President again thought, that though they had not a title to call them to account touching the Town's revenues, yet they had touching alienation of the Town's property. The pursuers averred from the Bar, that they had immemorially pastured there, and had a common herd for all the Burgesses, and paid for the pasturage only 6d. to that herd, which the defenders lawyers would not deny, but would not admit it. On the vote, it

carried to sustain the pursuers' title; in which I concurred, because of their possession of the pasturage; but we could proceed no further, as there was yet no warrant to discuss the reasons of reduction, that preliminary question alone being reported by Minto.—10th July, Adhered.

## No. 32. 1752, June 30. HERITORS, &c. of MUSSELBURGH *against* THE MAGISTRATES.

THE like question was reported by me on mutual declarators, touching these Magistrates' power to grant feus of their common. But the pursuers dropped it before the report, so that it was *ex parte*, and it was not said that the pursuers had any right of pasturage on the commons feued out;—and the Lords declared in favours of the Magistrates.

## No. 33. 1752, July 3. BURGESSES of IRVINE *against* MAGISTRATES.

IN mutual declarators touching the Magistrates' power to let long leases of a barren common muir, (in which the Magistrates made no objection to the pursuers titles,) the Lords thought that the 36th act Parl. 3, Jas. IV. never was intended to restrain Magistrates of Burghs from letting long leases, or even feuing out the lands or waste grounds; otherwise many wastes in the different Burghs must have remained yet waste, and many barren grounds uncultivated;—or if it was so intended, yet that part of the act is long since in desuetude; and therefore found, that these Magistrates had power to let leases and grant the feus quarrelled; but remitted to hear whether they were beneficial or prejudicial to the Burgh.

## No. 34. 1752, July 7, 8. TOWN of PERTH *against* CLUNIE, &c.

ALEXANDER CLUNIE and others having erected a brewery and distillery in the neighbourhood of Perth were in use of selling their ale to the inhabitants. Thereupon the Magistrates and Council made an act against the importation of such brewed ale under the penalty of L.5 for the first transgression, and the ale to be seized and confiscated, &c. Upon the first importation by Clunie they seized the ale, and the Procurator-Fiscal sued for the penalties, which the defenders advocated. The pursuers founded their powers to make the act, upon the act 154, Parl. 1592 against the exercise of Crafts in suburbs, and act 18, Parl. 1595 for settling hostellaries, and *3tio*, that Barons infeft *cum brueriis* can prohibit the importation of ale into their Burghs. The case was reported by Kilkerran; and the Lords unanimously found, that they had no power to make any such act, that it did not fall under either of the acts, and that Magistrates of Burghs Royal, though they have greater jurisdiction, they have no such privileges within the Burgh, as Barons infeft *cum brueriis* have within their own property or Barony.

## No. 35. 1752, July 10. MAGISTRATES of PITTENWEEM *against* CLELAND.

A BILL and bond of relief being granted pursuant to an act of the Town-Council in February 1743 and April 1747,—and in 1749 in July a bill of suspension passed in favours