

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 infest *cum brueriis* can prohibit the importation of ale into their Burghs. The case was reported by Kilkerran; and the Lords un-animously 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 infest *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

of the subscribers, and also of the then present Magistrates, (against whom horning and caption had been taken out) on consigning a disposition of the Town's funds. Drummore, 31st January 1751, found the letters orderly proceeded,—and on a reclaiming petition and answers we 10th July 1752 adhered. The answers indeed add these words to the interlocutor, “ against the present Magistrates,” whereby I suppose is meant the Magistrates for the time being; for the Magistrates were not only changed between the letters of horning and caption in July 1749, and Drummore's interlocutor in January 1751, but also between his interlocutor and ours; and yet the reclaiming petition seems to import that they were all found liable; and if they were not, then suppose Magistrates imprisoned for a Town's debt, they behoved to be liberated how soon they were out of office. But the case was not at all distinctly stated.

No. 36. 1752, Dec. 14. **MAGISTRATES of STIRLING *against* WALKER.**

IN a declarator at the Magistrates' instance against the Sheriff for declaring that they had the sole power in the first instance of judging in questions of building or repairing houses in that Burgh, and that the Sheriff and his successors ought not to judge in these matters,—the Lords waved giving any general declarator, because they thought it hardly sufficient to call as defender a Sheriff whose commission was during pleasure, and that at least the Officers of State should have been called; but as the summons complained of the Sheriff's judging in a late question in repairing a house touching a servitude of stillicide, they found that he had done a wrong in judging in that question, for that the Magistrates and Dean of Guild were the proper judges in such matters in the first instance.

No. 37. 1752, Dec. 15. **TRADES of BURNTISLAND *against* MAGISTRATES.**

NOTWITHSTANDING a decret of Session in 1681, that the Town-Council should consist of 21 persons, 14 merchant traffickers residing in the Burgh and seven trades,—and a decret-arbitral in 1728 by Dean of Guild Nimmo and Convener Keir in Edinburgh, in a submission signed by one of their Bailies for the Guildry and their Convener for the Trades,—and notwithstanding the old acts of Parliament, that officers within Burgh should be merchant traffickers residing in the Burgh; yet in respect of the set of the Burgh in 1708 recorded by the Royal Burghs in 1710 certifying the custom for 60 or 70 years before, and in respect of their practice since that time,—any nobleman or gentleman though no merchant or residenter may be chosen Provost,—and that in that case he is supernumerary over and above the 21 persons;—and they thought the decret-arbitral void, because the submission was not signed by the proper parties, the Merchants and several Crafts, or the several Deacons by warrant of the Corporations. They also found that the Deacons were not *virtute officii* Councillors, but that the Council had the election of the seven Trades-Councillors.

No. 38. 1752, Dec. 26. **MAGISTRATES of EDINBURGH *against* MYRETON.**

THE Magistrates having made an act of Council against gratis warrants to be granted to any person for importing wine free of impost on their grant in 1671 ratified in Parliament,—some wine of Sir Robert Myreton's was thereupon seized at the ports and condemned; which Sir Robert suspended, alleging that by the grant no wine was subject to