

bill we found that only the majority must be inhabitants; but we also altered that, and found that there was no restriction on the Councillors to be inhabitants. See No. 24.

No. 29.

1752. *January 8, 23.*

HEIRS and EXECUTOR of HENRY HALIBURTON, *Competing*, viz. HENRY GEEKIE *against* AGNES HALIBURTON and CHARLES HAY.

No. 30.

AN adjudger of a house in Canongate, on a warrant from the Sheriff to repair the house, and declaring the repairs a preferable debt, to which the proprietors consented, employed tradesmen, who repaired the house; but he died before he paid them; therefore his executor paid the tradesmen, and took an assignation, and got the Sheriff's decret cognoscing the repairs and declaring them a preferable debt; and therefore pursued declarator against the adjudger's heirs, that either they should repay him on getting assignment, or that he should be preferred to the rents till he were repaid; and by this time the ten years of the legal of the adjudication were expired. Kilkerran found that the repairs made during the adjudger's life were moveable and affected the pursuer's executor, and assoilzied. But on a reclaiming bill we altered, and found indeed that the repairs were moveable and affected his executors; but found that the relief competent out of the subject, or against the proprietor, was also moveable and descended to his executor, and that therefore the pursuer having paid these repairs, he was entitled to be repaid out of the first and readiest of the rents; for we thought that these repairs were neither real nor heritable debts, either in the persons of the tradesmen, or of the adjudger their employer, and that they were only personal and moveable; only by custom within Burgh they had a right to be paid out of the first of the rents; and we did not regard the lapse of the legal, both because the adjudger undertook the repairs as a creditor, and with consent of the proprietor, and because there was no declarator of expiration of the legal, and we could not declare it in this process; and few subjects are now carried by expired legals; though if the adjudger had obtained such a declarator, it would have altered the case; for then he would have been both creditor and debtor as to the obligation of relief. And 23d January adhered. (See DICT. No. 17. p. 5220.)

By custom within Burgh repairs are a burden on the property.