No. 5. 1753, Jan. 19. PROVOSTS M'AULAY and LINDSAY *against* HALL.

A DISPUTE having arisen betwixt Provosts M'Aulay and Lindsay, who had furnished mourning above L.120 at Lord Kimmergham's death, and had confirmed his library before the Commissaries of Edinburgh,—and Mr William Hall, the deceased's clerk, as trustee for sundry great creditors for sums amounting to several thousands of pounds sterling, who had confirmed before the Commissaries of Lauder,—17th January 1733 the Lords preferred the confirmation at Lauder, but remitted to the Ordinary to hear how far mournings furnished to children or servants were privileged debts, and preferable to other creditors. Upon this, by consent the books were sold, and Mr Hall paid the money to these two merchants, but took their bills for it in expectation as was said of their getting the creditors consent to their preference. Mr Hall never demanded payment, but his heir now sue,—and the defence was, that these mournings being no more than by custom was suitable at the interment at one of Lord Kimmergham's rank and station, they were properly funeral expenses, and therefore privileged and preferable. Lord Strichen, Ordinary, repelled the defence, and they reclaimed. Both bill and answers are well drawn and worth reading. My opinion was, that custom alone ought to determine what ought to be accounted funeral expenses, that mourning, hangings for the rooms, entertainment for the company, &c. were doubtless such, and privileged, and therefore such where custom required the children to be in mourning at the interment, the sons to attend the body to the grave, and not long ago the daughters, but now they must sit by the corpse and attend the chesting. I saw no reason why their mournings that they used at and before the interment should not be as much privileged as mourning hangings for rooms, so likewise of the servants, but I thought no more was privileged than what was used at or before the interment, and therefore I doubted of the Lady's mournings, who was not with her husband in Edinburgh when he died, but at Kimmergham. The President doubted if that was a good reason to make a difference, because though she were in the house, yet she does not appear. We sustained the defence for the merchants, but reserved to the pursuer to be heard whether there are any articles in the accounts that were not to be used at or before the interment.

GAME.

No. 1. 1753, Feb. 3. MR DAVID GREGORY *against* WEMYSS of Lathockar.

GREGORY having gone a fowling with a dog and gun with one Baird with him who had another gun, Wemyss met them and took Baird's gun from him as having no right to fowl. Gregory sued him before the Sheriff, who ordered restitution of the gun, and found expenses due. Wemyss advocated the cause, and offered to prove that Baird was a common fowler in terms of the act 1707, and that he killed and sold wild fowl, shot hares,

&c. Gregory denied the fact, but alleged not relevant unless he made it a trade, or *2do*, if he were such yet he could not seize and detain the gun without suing for confiscation; *3tio*, that Baird was only carrying another's gun for his use and that the gun was his. Replied, Killing for sale is the character of a common fowler, and in proof thereof the Judge should confiscate the gun to the defender who apprehended it, and that Gregory had not properly his property of the gun, and if he had, *non relevat*, since Baird a common fowler had the use of it. I reported the case, and the Lords repelled the reasons of advocation, and remitted the cause. *Renit.* Drummore, Haining, Strichen, Kilkerran, *et me.*—23d January 1753, Adhered.

GLEBE.

No. 1. 1734, Feb. 8. MR FARQUHAR BEATON *against* WILLIAM DALLAS.

THE Lords refused the bill.

No. 2. 1736, Nov. 9. MR MACKIE *against* WILLIAM NEILL.

THE Lords found that the glebe could not be in any manner feued, and therefore suspended the letters *simpliciter*.

No. 3. 1745, Jan. 3. MINISTER of KILWINNING *against* GLASGOW.

THE question was anent the L.20 Scots payable to Ministers for their grass by the 21st act 1663. There were in this parish about 200 heritors of kirk-lands, and great disputes which was nearest the manse, and which nearest the glebe, and whether the lands nearest the manse or nearest the glebe are primarily liable; 2dly, Where the land nearest the manse or glebe are all arable whether the L.20 ought to be assessed only on the proprietor of those nearest lands or on the whole heritors of kirk-lands. In this case the Presbytery had laid the L.20 wholly on Glasgow, and he brought the question before us. Several of us thought that the L.20 Scots is due even when there are no kirk-lands; 2dly, That where the L.20 is due instead of grass, it ought not to be allocated allenarly on the heritors of the nearest lands but upon the whole heritors. Of this opinion were Arniston and Tinwald; and others thought the relief was only against heritors of kirk-lands, and therefore the L.20 should only be allocated upon the heritors of kirk-lands where there are such,—and of this opinion were the President and Kilkerran. And others of us thought, that where there were no kirk-lands there could neither be designation nor L.20 by the act 1663 whatever might be due by custom since the rescinded acts 1644 and 1649,—and of this opinion were the President and I. The Lords found all the heritors whether of kirk-lands or temporal lands liable, in which I did not vote, and the Court were much divided. The Court were much divided as to the second question proposed, whether by the act the heritors of temporal lands have relief of the heritors of kirk-lands, and argued