

of the patrimony of burghs, are to be corrected, not by a popular action, but by other methods which the law has appointed. Anciently these things were subjected to the controul of the chamberlain; by the 26th act, 4th Parl. James V. the Magistrates of burghs were obliged to account for the common good yearly in Exchequer; and, by 28th act, 1693, it is declared, that it is the Royal prerogative to oversee and controul the management of the common good of burghs, and that the Crown will appoint for that purpose commissioners to be vested with the powers which were in the Exchequer. Such are the provisions made by the wisdom of the Legislature, and by these only is the administration of Magistrates to be examined, and their malversations corrected.

No. 74.

Answered for the pursuers: The purpose of this reduction is to enforce the observance of a public law, and to vindicate a right of pasturage which the pursuers have, by immemorial possession, acquired; and therefore the objection to the title must be repelled; more especially, as in the case of Johnston against the Magistrates of Edinburgh, 1735, the Lords found, that Johnston *qua* burgess, had a sufficient title for carrying on a reduction of feu granted by the Magistrates of Edinburgh of the mills belonging to that city.

“The Lords found the pursuers had a sufficient title to carry on this process.”

Act. Lockhart.

Alt. *Advocatus*.

Reporter, Minto.

Clerk, Pringle.

D.

Fac. Coll. No. 17. p. 35.

1753. January 2.

BURN against OGILVIE.

A person decerned executrix to one who was said to have died abroad, pursuing for payment of a bond due to the defunct, was found obliged to prove the death, the decree dative not being held sufficient evidence thereof, as such decrees pass of course without any proof.

No. 75.

Sel. Dec. Fac. Coll.

* * This case is No. 335: p. 11667. *voce* PRESUMPTION.

1753. November 26.

WEDDERBURN of St. Germans, and Others, against YORK-BUILDINGS COMPANY.

A division of the muir of Tranent being demanded in a process by some neighbouring heritors, who held their lands feu of the Earl of Winton, against the York-Buildings Company, successors to the Earl; and the titles founded on being infeftments of the lands belonging to the pursuers, with parts and pertinents, and an allegation of 40 years possession of the muir by common pasturage; an act was pronounced for dividing the muir. In a reclaiming petition, it was objected,

No. 76.

A division of a muir upon the title of an infeftment with an alleged 40 years possession of

No. 76.
common pas-
turage, not
sufficient
without a
proof of
possession,

That the pursuers could not legally carry on this process till their titles were instructed, to which a proof of possession was necessary. "And accordingly, the Lords sustained the objection, and found, that the pursuers must prove their possession, in order to make good their titles, before proceeding to a division."

Sel. Dec. No. 58. p. 77.

1761. February 17. GORDON *against* OGILVIE.

No. 77.

An apparent heir is entitled to pursue a reduction of a disposition obtained from his predecessors by a fraud; but a ratification by a prior apparent heir is sufficient to exclude him.

Sel. Dec. Fac. Coll.

* * * This case is No. 57. p. 14070. *voce* RES INTER ALIOS.

1765. August 10. SYME *against* STEELE.

No. 78.

A process with penal conclusions against a bankrupt, at the instance of his creditors, without the concurrence of the King's advocate, not sustained, the concurrence of his Majesty's advocate is necessary.

Fac. Coll.

* * * This case is No. 19. p. 14979. *voce* SUMMARY APPLICATION.

1765. August 9.
MERCHANT COMPANY and TRADES of EDINBURGH, *against* The GOVERNORS
of HERIOT'S HOSPITAL.

No. 79.

Ascertained in this action, who are entitled to call the Governors of an Hospital to account.

Fac. Coll.

* * * This case is No. 2. p. 5750. *voce* HOSPITAL.