BURGH-ROYAL.

1776. *August* 9. FLEMING and OTHERS, Magistrates of Rutherglen, *against* URIE, &c.

By the 22d Act of the Convention of Estates, *anno* 1689, Town's pensioners were excluded from the voting at elections. This Act, though made with an immediate view only of regulating the poll election then ensuing, has been thought so just and equitable as to have been copied as a rule in all elections since that period. But, though Town servants, or Town pensioners may, with some degree of propriety, be considered as unfit persons to be trusted with a vote on such occasions, because they hold their employment, or pensions, at the will of the Town-Council; yet when this disqualification was extended, by an Act of the *Town Council* of Rutherglen, to all the town debtors, by bond, tack duty, or any other way, the Lords thought the extension contrary to the common law and rights of burgesses; and therefore, when it was rescinded by a contrary Act of Council, the Lords sustained that Act when brought under reduction, and assoilyied the defenders, and gave expenses.

1776. *February* 16. ROBERT FALL and MAGISTRATES of DUNBAR *against* FERGUSON, &c.

THE public streets of a royal burgh belong to the Crown; and the Magistrates and Council have no power to appropriate any part thereof as private property: so found 3*d November* 1740, *Miller* against *Magistrates of North Berwick*, observed by Kilkerran, page . See also case of *Scot of Brotherton* against *The Magistrates of Montrose*, 27*th February* 1762, 111 *New Coll.* No. 189. (The case of the Town of Aberdeen as to the New Inn is mentioned in these papers.)

These cases came to be considered in a dispute betwixt Mr Fall and certain other inhabitants of Dunbar, about shutting up the Backraw of Dunbar, of which the Magistrates had given a feu to Mr Fall. In this case the Backraw was no part of the public street of Dunbar. It was no more than a road from the circumjacent country leading into the Town, and which, dividing into two at the end, one branch constituted the Backraw to the north, which was to be shut up; the other to the south, equally convenient, remaining open. The Justices had given their opinion, so far as it was a road for the country, that the Backraw might be shut up without inconvenience; and Mr Fall offered that the south road, proposed to be used instead of it, should be made 21 feet in breadth, and be paved and repaired by him and the inhabitants of Dunbar, a

few excepted, Town-Council and Magistrates, approved of the measure. The Lords, 16th February 1776, "found that the Magistrates of Dunbar, as administrators of the burgh of Dunbar, had power, for the benefit of the burgh, to shut up the Backraw, the road in question. But found that the charger is bound to widen and repair the south road, as mentioned in the minute, (*i. e.* to the breadth of 21 feet, and to pave it,) before he should be at liberty to shut up the Backraw; and found expenses due.

Against this interlocutor, the decision in the case of *Turner of Pinnaclehill*, observed by Falconer and Kilkerran, was strongly urged. But the Lords thought that, in this case, the Backraw was not properly a road, and therefore that the Justices of Peace had nothing to do with the matter;—and that Magistrates of burghs are vested with powers to regulate the entry to, or by lanes of the burgh, as they think fit, for the benefit of the burgh.

PRISON OF CROMARTY.

IN the year 1672 the Magistrates and Town Council of the royal burgh of Cromarty, with concurrence of certain of the burgesses, applied to the Parliament of Scotland, setting forth their poverty and want of trade, and praying to be relieved of the burden of sending a Commissioner to Parliament, and granting procuratory for resigning their privileges as a burgh-royal, into the hands of his Majesty or the Estates of Parliament, Lords of Exchequer, and Convention of Burghs, to remain with his Majesty *ad perpetuam remanentiam*. An Act passed accordingly. The King, with consent of the Estates, accepted of the resignation, and ordained the name of the burgh to be expunged out of the rolls of Parliament; and that thereafter they should have no Commissioner in Parliament, or Convention of Burghs, and be no more accounted a burgh.

In 1685 it was erected into a burgh of barony, by Act of Parliament, in favours of the Viscount of Tarbat, and appointed the head burgh of the shire.

From the time of its being a royal burgh, the Town House and Prison were continued; but both having become ruinous, they were lately rebuilt by George Ross, Esq. proprietor of Cromarty. But doubts having arisen concerning the power of Magistrates, or other officers of the law, to incarcerate prisoners in this new prison; (7th March 1776,) a petition was given into Court, in name of Mr Ross, the Sheriff, and certain of the Justices of the Peace of the county, and the baron-bailie of Cromarty, for having it declared a lawful public prison; to the effect, that persons for civil debts, or causes whatsoever, might be imprisoned therein, in the same manner as in other public prisons of the kingdom.

The Lords remitted the petition to the Lord Hailes, Ordinary on the Bills, to inquire into the facts, and report.

See Ersk., *B.* 4, *Tit.* 3, § 13, *13th March* 1623, *Baillies of Dunse;* Dictionary, *voce Prisoner*, Kilkerran; *E. of Hyndford* against *The Burgh of Hamilton*, *9th December* 1740; *23d December* 1682, *Williamson* against *Bailies of Hamilton.*

It was said that there is a prison in similar circumstances in the Town of Greenlaw, a burgh of barony, but head burgh of the county of Berwick. The maintenance of prisoners in this prison is defrayed at the expense of the

county. The Sheriff administers the benefit of the Act of Grace; and he, and the jailer, are liable for the escape of prisoners.

1776. *December* 19. MAGISTRATES of KILMARNOCK *against* The INHABITANTS.

THE common good of a royal burgh is vested in the Magistrates, as trustees and commissioners for the burgh, with powers of administration for the good of the burgh. Among these, a power of feuing has been established by decisions of the Court, in the case of *Renfrew*, not collected; and in the case of *Irvine*, collected, 3*d July* 1752. And it has been exercised in several instances, never controverted, much to the advantage of the burgh; as in the case of *The Town of Ayr and Others.*

See case of *Paisley*, *h. c. p.* 442; *Glasgow*, 4 *New Coll. p.* 328; *Heriot's Hospital*, 4 *New Coll. p.* 46.

Part of the common good of Kilmarnock, a burgh of barony, called the Green, had, from the year 1690 downwards, been used by the manufacturers of the Town for different purposes, of washing, bleaching, drying their wool, &c. It had been generally under tacks let by the Magistrates; and to the tacksmen the other inhabitants, who wanted the use of it as above mentioned, paid a small gratuity. The Magistrates, *anno* 1772, took a resolution to feu an eighth part of this green for building houses. Their doing so tended to increase a little the revenue of the burgh, but the inhabitants insisted that the feuing any part of it for building was prejudicial to their interest, and to the manufactures of the place. In a suspension, the Lord Gardenstone, Ordinary, pronounced this interlocutor:—"Finds, that the right of property of the green in question is only vested in the Magistrates as trustees and administrators for the benefit of the community; finds it sufficiently proven, That the manufacturers and inhabitants have always had the use of this ground for the purposes of bleaching, drying, &c.: Finds, That the Magistrates may, by fencing the ground, or other proper means, render it more useful for these purposes. And though granting feus may increase the public revenue under the management of governing persons, yet it is neither a proper nor a just act of administration to alienate this piece of ground, which the inhabitants have always occupied and used for the purposes of industry and manufactures in the village; therefore suspends the letters *simpliciter*, and decerns."

And, upon advising a reclaiming petition and answers, (19th December 1776,) the Lords adhered, and found the suspenders entitled to their expenses. They held, that although the Magistrates had a title to feu, where their doing so was for the advantage and benefit of the Burgh and of the inhabitants, yet, in a competition betwixt an increase of the revenue of the burgh and the benefit of the inhabitants in their manufactures, &c., they thought the last was to be preferred.

The Magistrates again reclaimed, gave in a condescendence, and offered to prove that the inhabitants never had a servitude for washing, bleaching, &c. upon this green: that it was generally in tack, and, when so, that the inhabitants paid a consideration to the tacksmen for the liberty of the green; that