

Upon advising the complaint, with answers, &c. "the LORDS find, in respect the family of Ulbster have been in possession of approving the leets of Provost and Bailies for the burgh of Wick, that the election of the respondent John Sutherland as Provost of Wick is void and null; and find, that James Sinclair of Harpsdale was duly elected Provost of the said burgh; and decern accordingly." And, upon a reclaiming petition and answers, "adhered."

Act. Sol. General, J. Boswell. Alt. Ilay Campbell, M<sup>r</sup> Laurin, Crosbie. Clerk, Pringle.

Fol. Dic. v. 4. p. 86. Fac. Col. No 57. p. 142.

1777. February 7. CARNEGIE against MAGISTRATES of MONTROSE.

FULLARTON of Kinnaber, in 1663, let in lease to the town of Montrose 'the salmon-fishings on the sands and sea-shore from the mouth of the water of South Esk, northward till it came opposite a march-stone on the links, for 19 years, for payment of two shillings Scots, if required.' And the town possessed the said fishings from that period, letting them in lease by public roup, &c. without paying themselves any tack-duty. Carnegie having acquired the land of Kinnaber, pursued a removing against the town from these fishings; and it was urged in defence, That by charter from David II. the town held right to 'piscaria infra aquas de Northesk et Southesk.' And as the fishings in question were clearly comprehended under that description, so the immemorial possession which the town had enjoyed, must be ascribed to that ancient grant, and not to a lease which had proceeded on some mistaken idea of a right in the lessor; but which they had never acknowledged by the payment of any rent. Answered for Carnegie, That his authors stood infeft in this fishing *per expressum* under charters from the Crown as far back as 1592; and that the acceptance of the lease by the town of those specific fishings contained in his charters, was conclusive evidence against the present plea. They had possessed on that lease ever since it was granted, and cannot now ascribe their possession to any other title. THE LORDS decerned in the removing. See APPENDIX.

Fol. Dic. v. 4. p. 87.

1793. February 26.

The CREDITORS of John Jackson, and HARRIET PYE ESTEN, against STEPHEN KEMBLE.

By 10th Geo. II. chap. 28. § 5. it is enacted, That no person shall be authorised 'by letters-patent from his Majesty, or the licence of the Lord Chamberlain,' to exhibit theatrical entertainments; except within the liberties of Westminster, or the actual residence of his Majesty.

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*Prima facie* evidence of right to an exclusive privilege, held