

amount. The House of Lords found, ‘ That this case ought to be
 ‘ considered as falling within the meaning of that clause in the
 ‘ statute of 1663, c. 21. which relates to the repairing of manses,
 ‘ and not within the clause which relates to the building of manses,
 ‘ where manses had not been then already built: And it is
 ‘ ordered and adjudged, that with this finding, the said interlo-
 ‘ cutors of the 11th of March 1815, and the 12th of May 1815,
 ‘ and so much of the said interlocutor of the 16th of January
 ‘ 1816 as refuses the desire of the petition of the appellant, and
 ‘ adheres to the interlocutor reclaimed against, be affirmed: And
 ‘ it is further ordered and adjudged, that the said several other
 ‘ interlocutors be affirmed, with £100 costs.’

Mar. 2. 1821.

Appellant's Authorities.—(2.)—2. St. 6. 19; 1. Mack. 5. 12; 2. Bankt. 8. 121;
 2. Ersk. 10. 55. 56; Carfrae, May 13. 1814, (F. C.)

Respondent's Authorities.—(2.)—1. Ersk. 1. 53. — (3.) — Min. of Inverury, Aug. 9.
 1760, (not rep.); Mercer, March 17. 1786, (not rep.); 1. Ersk. 1. 45; 1. St. 1. 16;
 1. Bankt. 1. 60; Duke of Hamilton, July 13. 1813, (Ho. of Lo.)

J. CHALMERS,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 7.*)

ROBERT ANGUS and Others, Appellants.—*Romilly—Moncreiff.*
 DUNCAN MONTGOMERIE, D. WISHART, Captain JOHN MONT-
 GOMERIE, and J. GULLAND, Respondents.—*Warren—Grant.*

No. 4.

Burgh Royal—Stat. 16. Geo. II. c. 11.—It having been held in the Court of Session,
 that where councillors of a burgh were elected for life, and had been long on the
 roll, and no new election was usual, and where no objection had been made to their
 continuing on the roll, the House of Lords, in the circumstances of the case, affirmed
 the judgment as to the respondents before the House.

ROBERT ANGUS and others, councillors of the burgh of Inver-
 keithing, presented a petition and complaint, under the 16th
 Geo. II. c. 11. against Montgomerie and others, stating that
 by the set of the burgh it was declared that ‘ the council
 ‘ consists of fifteen persons at least, viz. the Provost, two Bai-
 ‘ lies, Dean of Guild, and Treasurer, and ten or more inha-
 ‘ bitant Burgesses:’ That the mode of election was ordered to
 be thus: ‘ Upon the 29th of September yearly, the Magistrates
 ‘ and old council meet in the forenoon within their tolbooth; and
 ‘ when those of the old council, who are desirous of an ease, have

Mar. 2. 1821.

1ST DIVISION.

Mar. 2. 1821.

demitted their offices, they choose as many new councillors in
 their room to keep up the number; and first they elect the Pro-
 vost, then leets five of the council, and chooses two out of them
 Bailies for the ensuing year; next leets three, and chooses the
 Dean of Guild; and last two, and chooses the Treasurer;
 all swearing the oaths de fidei and secresie, and taking
 and signing the oaths, &c. for the time ordered to be
 taken, and the burgh letter anent elects read immediately there-
 after: That, at the Michaelmas election of 1812, a general
 protest was taken against illegal votes; that Montgomerie and
 several others, including the respondents, were not 'inhabitant
 burgesses;' and that, notwithstanding, one of them had been
 elected bailie, and the others had been continued on the roll as
 councillors. They therefore prayed that they should be struck
 off the roll, and declared disqualified. To this Montgomerie &c.
 answered, that, by the practice of the burgh, the councillors were
 elected for life; that the allegations were not relevant to disqua-
 lify them; and it was averred that they were inhabitant burgesses.
 On this latter averment the parties being at issue, a proof was
 allowed and taken, on advising which, the Court, on the 2d
 of January 1816, found, 'That the said complaint is competent
 against such of the respondents as were continued on the roll
 of councillors of the burgh of Inverkeithing, at Michealmas
 1812, in so far as they or any of them were by law disqualified
 from being continued: That by the set and constitution of the
 said burgh, the councillors thereof must be inhabitant burgesses,
 and therefore sustain the objections of non-inhabitantcy made
 by the complainers against the following persons on the said
 roll at Michaelmas 1812, viz. John Muckersy, John Gulland,
 David Wishart, William Fulton, and Captain John Mont-
 gomerie: That the said pursuers, and each of them, were dis-
 qualified from being so continued, or from acting as councillors
 of the said burgh, and grant warrant to and ordain the clerk of
 the said burgh to expunge their names from the said roll, and
 decern accordingly: Repel the whole objections to the con-
 tinuance of Duncan Montgomerie and Alexander Montgomerie
 on the said roll at Michaelmas 1812, and also repel the whole
 objections to the election of Alexander Montgomerie as a bailie
 of the said burgh at Michaelmas 1812, and assoilzie them and
 each of them from the conclusions of the said complaint, and de-
 cern, and find none of the parties on either side entitled to ex-
 penses of process.'

Both parties reclaimed, and Montgomerie and the other re-
 spondents, against whom judgment had been pronounced, now

Mar. 2. 1812.

objected, that as they had been previously elected councillors for life,—that as no new election was necessary, except where some of the councillors had ‘ demitted,’—and as no special objection had been made, nor any vote taken as to their continuing on the roll, no wrong had been done at the election by the Magistrates; and it was, therefore, not competent to deprive them of this right in a summary form, or to complain under the 16th Geo. II. c. 11. To this it was answered, 1. That the objection was too late, after issue had been joined and proof taken on the merits; and, 2. That a wrong had been done in continuing persons on the roll as councillors, who could not lawfully hold the office; and that it was not necessary to state special objections, because, as it is undoubted that a person not present at an election may competently complain of the proceedings at it, so the statement of any objection cannot be necessary to found the competency of such a complaint. The Court refused the petition of Angus and others; and, on advising that for Montgomerie and others, they on the 21st of May 1816, and 18th January 1817, ‘ Alter the interlocutor reclaimed against, and find the complaint incompetent, in so far as the same concludes against Captain John Montgomerie, David Wishart, and John Gulland, in respect there was no special objection stated against them at the Michaelmas election 1812, no vote put upon such special objection, and consequently no wrong done by the Magistrates at that election: Therefore dismiss the said complaint, and assoilzie the said John Montgomerie, David Wishart, and John Gulland from the conclusions of the said complaint, and decern;’ and found them entitled to expenses in relation to this point.*

Against these judgments, both on the point of competency and on the merits, so far as the qualification of the parties mentioned in the interlocutor of the 2d of January was sustained, Angus and others appealed; and appearance being made by Duncan Montgomerie, who had been found qualified, and by David Wishart, Captain John Montgomery, and John Gulland, who had been held disqualified, but who were successful on the objection to the competency, the House of Lords found, ‘ That, in the circumstances of this case, an application by summary complaint to the Court of Session in Scotland could not be sustained with respect to the respondents now before this House. It is therefore ordered and adjudged, that the appeal be dismissed, and the

* See Fac. Coll. Vol. 1815-1819, No. 87. From the report of the opinion of the Judges there given, they were unanimous in sustaining the objection to the competency

Mar. 2. 1821. ' interlocutors complained of affirmed, so far as they relate to the
' respondents now before this House.'

Appellants' Authorities.—(Competency,) Wight, 340. 341; Kilk. 107. Andrew, Jan. 24. 1775, (1883); Marshall, Dec. 4. 1782, (1887); Tenant, Feb. 23. 1785, (1888); Harrowar, Dec. 5. 1812, (not rep.); Dempster, Mar. 3. 1791, (8868.)

Respondent's Authorities.—(Competency,) Andrew, Feb. 17. 1749, (1842); Dunbar, Jan. 7. 1757, (1855.)

J. CAMPBELL,—A. GRANT,—Solicitors.

(*Ap. Ca. No. 8.*)

No. 5. Sir WM. F. ELIOTT, Appellant.—*Fullerton—Brougham.*
GEORGE POTT, Respondent.—*Dean of Fac. Ross—Mackenzie.*
Et è contra.

Entail—Lease.—Held,—1.—Reversing the judgment of the Court of Session, that a prohibition in an entail to *dispose*, fortified by irritant and resolute clauses, deprived an heir of power to grant a lease for 77 years on a grassum, although the word *alienate* was not employed; and,—2.—Affirming a judgment, that a lease of 77 years, with a grassum, was an alienation.

*See L. Ch. Opinion
Addendum 10.89*

Mar. 14. 1821.

1ST DIVISION.

Lord Gillies.

By the entail of the estate of Stobbs, executed in 1719 by Sir Gilbert Elliott, the prohibitory clause declares, ' That it shall not
' be leisome nor lawful to me, the said Sir Gilbert Elliott, nor to
' any of my heirs and successors foresaid, to sell, and I hereby
' bind and oblige me and them not to sell, annalzie, wadset, dis-
' pone, dilapidate, and put away the said lands, baronies, and
' estate, or any part or portion thereof, heritably and irredeem-
' ably, or under reversion, (except in so far as the faculties above
' written do extend,) nor contract or ontake debts thereupon, or
' grant bonds or other securities therefor, nor do or commit any
' other facts, deeds, or delicts, civil or criminal, whereby the said
' lands and estate may be anyways apprised, adjudged, forfaulted,
' evicted, or affected, nor to infringe, alter, or innovate this pre-
' sent substitution, or course of succession, in defraud and preju-
' dice of the subsequent heirs of provision above mentioned, con-
' form to the order and substitution above specified: Neither
' shall it be lawful to me, nor to any of my heirs of provision
' foresaid, whether male or female, to suffer the said lands, ba-
' ronies, and estate, or any part thereof, to be adjudged or ap-
' prised for debts to be contracted, but shall be obliged to re-
' deem the same within the space of eight years after deducing
' or leading any such diligence.' The irritant and resolute