

by them, but only their Deacons. This was as to the accounts 1719, 1720, 1721, and 1722. *4to*, Found the Town liable for the agent's expenses in defending an election wherein he was employed by the Magistrates and Council after 1723, and repelled the prescription. (Arniston thought that prescription did not take place in such accounts of Corporations where there can be no oath of party,—but others thought the act of Council 1730 sufficient interruption.) *5to*, As to expenses of defending elections in 1730 and afterwards, most of the Lords thought, that if Muirhead's employers were the Magistrates in possession, the Town was liable; but as it was said that both parties were contending for possession, they remitted to the Ordinary to enquire into that fact.—November 4th Adhered as to the 3d.—*Vide* 12th July 1748.

In respect Mr Muirhead's employers were in possession in 1731, therefore find the Town liable for his account, though his employers were in the event turned out of the magistracy.—(12th July.)

No. 29. 1749, Jan. 12. ELECTION OF WICK.

By the charter of erection of this Burgh, the Provost and Bailies were appointed to be chosen *cum avisamento et consensu Geo. Comitum & Caithness et ejus heredum et successorum*, who were also to have the half of all sums paid for admitting Burgesses;—and till that family's affairs went into disorder the Earls were always chosen Provosts, and the Bailies chosen by poll out of a list approved by him. But after the estate came to Earl of Breadalbane, the Provost was chosen as well as the Bailies without regard to that clause, till 1716 that by act of Convention Earl of Breadalbane was put in Earl of Caithness's place, and the former custom revived, with that only alteration. The Town now pursues declarator against Ulbster as come in Breadalbane's place, to declare that he has no right to that privilege, with sundry other conclusions. In which Earl of Caithness appeared for his interest,—and as to it two questions were argued, first, Whether it was alienable by the family of Caithness? and both Kilkerran and I thought it was, not only because we had found offices, even that of King's Usher, to be alienable, but also because this privilege was not only *hereditibus* but *successoribus*, which must signify some persons that could not be heirs; and 2dly, Here was a patrimonial estate, half of the dues of entering Burgesses. Second question, If it could be alienated, there being produced for Ulbster a charter in 1694 on sundry apprisings, containing *hereditaria officia lie Provestriis cum privilegiis et libertatibus infra Burgum de Wick*, and parties said they were ready to produce the apprisings? I did not think that *lie Provestriis* carried this right, but I thought the word *privilegia* did. However it carried by a great majority that it was not alienable. Next we found that the list for Provost and Bailies should be approved by the Earl of Caithness; *3tio*, That Burgesses, heritors of houses in the Burgh, though not residing in it, might vote at the poll; *4to*, That a person might be Provost though not residing. (The parties agreed that honorary Burgesses could not vote at the poll, and that the Bailies behoved to be inhabitants;) and *5to*, We found that all the Councillors behoved to be also inhabitants in the Burgh, though no statute requires it, and it was the usage in this Burgh no more than in many others. But some of us thought that the charter required it, which I own I did not.—5th January 1749, On a reclaiming bill, find first the pursuers have suffi-

cient title.—12th January Find the privilege to the Earl of Caithness alienable, and order Ulbster to produce all his titles, and find that a majority of those elected Councillors must be inhabitants; but now altered this last, and found there was no limitation of Councillors to be inhabitants.—13th June Altered by President's casting vote, and found there must be a majority of inhabitants including Bailies or proprietors;—24th June Adhered; and 4th July found of consent that the Dean of Guild and Treasurer must be resident Burgesses.

No. 30. 1752, Jan. 8, 23. GEEKIE, HAMILTON, and HAY.

HENRY HALIBURTON, writer, as creditor by adjudication on Jackson's land, which was going into disrepair, obtained the Sheriff's warrant for repairing, and declaring these repairs a preferable debt, and Jackson the proprietor consented. Haliburton died before he paid the tradesmen; and these three persons were his heirs-portioners; but Geekie was sole executor; and he paid the tradesmen, took assignations from them, and got the extent of repairs cognosed by the Sheriff; and pursued declarator against his co-heirs, that they should either repay him the two-thirds on his assigning them, or otherwise that he should be preferred for his reimbursement on the tenement; and Kilkerran, Ordinary, found that the repairs made during Haliburton's life were moveable debts that affected his executor, and therefore assoilzied the heir. But on a reclaiming bill we found indeed that the expenses of the repairs were moveable, and affected his executors; but found, that the relief competent to Haliburton of those expenses either against Jackson or out of the rents was also moveable, and descended to his executor; and that therefore the pursuer having paid them, was entitled to be paid out of the first and readiest of the rents of the tenements; for we thought that those expenses were not real nor heritable debts either in the persons of the tradesmen or of Haliburton, if he had paid them,—but that they were personal and moveable,—only by custom within Burgh, they had a privilege of retention till paid, or of being paid out of the first of the rents, because *rem salvam fecerunt*. But if the creditor should neglect that privilege, and suffer the proprietor to possess and dispose of the rents for some considerable time, and afterwards to sell them, the purchaser would not be liable for these repairs.—23d January Adhered.

No. 31. 1752, June 30. BURGESSES of IRVINE (RENFREW) *against* THE  
MAGISTRATES.

ANDERSON and others, Heritors and Burgesses of Renfrew, pursued reduction of certain leases of part of the Town's commony, where the pursuers were wont to pasture for two 19 years, taken by some of the Council for next to an elusory rent as 14 or 16 pence the acre, and the Town obliged to inclose. The Magistrates objected to the pursuers' title; and we all agreed, that if the pursuers had a right of pasturage they had a good title. The President again thought, that though they had not a title to call them to account touching the Town's revenues, yet they had touching alienation of the Town's property. The pursuers averred from the Bar, that they had immemorially pastured there, and had a common herd for all the Burgesses, and paid for the pasturage only 6d. to that herd, which the defenders lawyers would not deny, but would not admit it. On the vote, it