

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