

1748. *July 12.* MUIRHEAD *against* MAGISTRATES of HADDINGTON.

No. 28.

AN agent being employed by the Convenery, (that is the Deacons of Crafts) at Haddington in 1719,-20,-21, and 1722, in reductions of several consecutive elections of Magistrates, in which the pursuers at last prevailed; the Lords found the Burgh not liable for his account of expenses, because he was not employed by the Town Council; *2do*, Found also the account prescribed, notwithstanding an act of Council in 1730 acknowledging that it was not paid; *3tio*, Found the several incorporations of Crafts not liable because not employed by them, but by the Deacons;—and being employed by the succeeding Magistrates and Council to defend their election in 1723, found the town liable for the account, and found it not prescribed in respect of the said act. Arniston thought such accounts fell not under the act of prescription, because there is no party by whose oath they can be proved. And as to the accounts of expenses in defending the election 1730, remitted to the Ordinary to enquire whether that agent's employers were or were not in possession; and their possession being proven, we found the town liable, though his clients were in the issue turned out.

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1749. *January 12*

ELECTION of WICK.

No. 29.

IN the declarator at the instance of several inhabitants of the town of Wick against Ulbster, that he had no right to a privilege contained in their charter of erection by King James VI., that the Provost and four Bailies must be chosen *cum avisamento Georgii Comitum de Caithnes ejus hæredum et successorum*, who also had by the same charter a proportion of the entry-money of every Burgess; the Earl of Caithness having compeared for his interest, we first found that privilege not alienable, but inherent in the heirs to the honours of Earl of Caithness, 18th November 1748; but we afterwards altered, and found it alienable, and remitted to the Lord Ordinary to hear parties procurators, whether it was actually alienated; *2do*, We found that a person not residing might be Provost, because of the immemorial usage, though the charter expressly required that the Provost and four Bailies be inhabitants; *4to*, We found that the Councillors must be inhabitants, which some of us thought was required by the charter; but on a reclaiming

bill we found that only the majority must be inhabitants; but we also altered that, and found that there was no restriction on the Councillors to be inhabitants. See No. 24.

No. 29.

1752. *January 8, 23.*

HEIRS and EXECUTOR of HENRY HALIBURTON, *Competing*, viz. HENRY GEEKIE *against* AGNES HALIBURTON and CHARLES HAY.

No. 30.

AN adjudger of a house in Canongate, on a warrant from the Sheriff to repair the house, and declaring the repairs a preferable debt, to which the proprietors consented, employed tradesmen, who repaired the house; but he died before he paid them; therefore his executor paid the tradesmen, and took an assignation, and got the Sheriff's decret cognoscing the repairs and declaring them a preferable debt; and therefore pursued declarator against the adjudger's heirs, that either they should repay him on getting assignment, or that he should be preferred to the rents till he were repaid; and by this time the ten years of the legal of the adjudication were expired. Kilkerran found that the repairs made during the adjudger's life were moveable and affected the pursuer's executor, and assoilzied. But on a reclaiming bill we altered, and found indeed that the repairs were moveable and affected his executors; but found that the relief competent out of the subject, or against the proprietor, was also moveable and descended to his executor, and that therefore the pursuer having paid these repairs, he was entitled to be repaid out of the first and readiest of the rents; for we thought that these repairs were neither real nor heritable debts, either in the persons of the tradesmen, or of the adjudger their employer, and that they were only personal and moveable; only by custom within Burgh they had a right to be paid out of the first of the rents; and we did not regard the lapse of the legal, both because the adjudger undertook the repairs as a creditor, and with consent of the proprietor, and because there was no declarator of expiration of the legal, and we could not declare it in this process; and few subjects are now carried by expired legals; though if the adjudger had obtained such a declarator, it would have altered the case; for then he would have been both creditor and debtor as to the obligation of relief. And 23d January adhered. (See DICT. No. 17. p. 5220.)

By custom within Burgh repairs are a burden on the property.