

BURGH-ROYAL.

1776. *August 9.* FLEMING and OTHERS, Magistrates of Rutherglen, *against* URIE, &c.

By the 22d Act of the Convention of Estates, *anno* 1689, Town's pensioners were excluded from the voting at elections. This Act, though made with an immediate view only of regulating the poll election then ensuing, has been thought so just and equitable as to have been copied as a rule in all elections since that period. But, though Town servants, or Town pensioners may, with some degree of propriety, be considered as unfit persons to be trusted with a vote on such occasions, because they hold their employment, or pensions, at the will of the Town-Council; yet when this disqualification was extended, by an Act of the *Town Council* of Rutherglen, to all the town debtors, by bond, tack duty, or any other way, the Lords thought the extension contrary to the common law and rights of burgesses; and therefore, when it was rescinded by a contrary Act of Council, the Lords sustained that Act when brought under reduction, and assoilyied the defenders, and gave expenses.

1776. *February 16.* ROBERT FALL and MAGISTRATES of DUNBAR *against* FERGUSON, &c.

THE public streets of a royal burgh belong to the Crown; and the Magistrates and Council have no power to appropriate any part thereof as private property: so found *3d November 1740*, *Miller against Magistrates of North Berwick*, observed by Kilkerran, page . See also case of *Scot of Brotherton* against *The Magistrates of Montrose*, *27th February 1762*, 111 *New Coll.* No. 189. (The case of the Town of Aberdeen as to the New Inn is mentioned in these papers.)

These cases came to be considered in a dispute betwixt Mr Fall and certain other inhabitants of Dunbar, about shutting up the Backraw of Dunbar, of which the Magistrates had given a feu to Mr Fall. In this case the Backraw was no part of the public street of Dunbar. It was no more than a road from the circumjacent country leading into the Town, and which, dividing into two at the end, one branch constituted the Backraw to the north, which was to be shut up; the other to the south, equally convenient, remaining open. The Justices had given their opinion, so far as it was a road for the country, that the Backraw might be shut up without inconvenience; and Mr Fall offered that the south road, proposed to be used instead of it, should be made 21 feet in breadth, and be paved and repaired by him and the inhabitants of Dunbar, a