1810.

MASTERTON, &c. *v.* MEIKLEJOHN, &c.

far as they are inconsistent with this finding, be, and the same are hereby reversed. And it is further ordered, that, with this finding, the cause be remitted to the Court of Session in Scotland to do therein, and as to the several interlocutors complained of, as this finding requires, and is consistent therewith.

For Appellant, *William Adam, M. Nolan.*
For Respondents, *Sir Sam. Romilly, Geo. Jos. Bell, Henry Brougham.*

NOTE.—Before this reversal was pronounced in the House of Lords, it had been decided in the Court of Session, in another case, (Tod and Co. *v.* Rattray, 1st Feb. 1809,) upon a strongly urged opinion delivered by Lord President Hope, that their judgment in Spence *v.* Auchie, Ure, and Co., was erroneously decided. Lord President Blair and Lord Meadowbank concurring in this.

ALEXANDER MASTERTON, ROBERT BALD, WILLIAM FULTON, Bailies of the Burgh of Culross; JAMES BENNET, Merchant-Councillor and Dean of Guild, elected at the Meeting at Michaelmas 1803; GEORGE ROLLAND, SIR ROBERT PRESTON, and Others, Councillors of the said Burgh, } *Appellants;*

DAVID MEIKLEJOHN, elected Second Merchant-Bailie at Michaelmas 1802, and Others, Councillors and Office-Bearers of the said Burgh of Culross, . . } *Respondents.*

House of Lords, 22d March 1810.

BURGH ELECTION OF MAGISTRATES AND COUNCILLORS.—Circumstances in which it was held, that as there was not a majority of councillors present to constitute a legal meeting of council, an objection stated to the legality of the meeting, on that ground, was sustained. Affirmed in the House of Lords.

This was a dispute about the election of the Magistrates and Councillors of the burgh, under the old system of election, wherein the respondents complained of that election, and prayed the Court to declare the election void, on the following grounds:—1. That due premonition was not given, and no premonition regularly served. 2. That there was not a quorum of council present. 3. That the election was the act of a minority of councillors, in opposition to the act of the majority. 4. That it was only the act of a certain

number of magistrates or councillors, taking upon them to separate from the majority, who had been such for the year preceding, and also taking upon them to make a distinct and separate election. 5. That, in terms of the statute, 16 Geo. II. c. 11, it was in certain essential respects the act of the minority of magistrates, councillors, and deacons, respectively, separating from the majority of those having right to act by the constitution of the burgh, and making a separate election of magistrates and councillors.

After proof and much discussion, the Court pronounced this interlocutor, "Repel the objections stated in the com- Mar. 5, 1805.
"plaint, with regard to the summoning the council for the
"meeting of 28th September 1803; but find that there was
"not a majority of councillors present to constitute a legal
"meeting of council upon the said 28th September; and,
"therefore, sustain the objection stated on that head, and,
"before answer as to the other points in the cause, appoint
"the counsel for the said parties to give in memorials to
"see and interchange the same betwixt and
"the second box day in the ensuing vacation."

On reclaiming petition, the Court adhered. May 28, 1805.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellants, *Thos. Plumer, David Boyle.*

For the Respondents, *Henry Erskine, John Clerk, Wm. Adam, Thos. Thomson.*

NOTE.—Unreported in the Court of Session.

ROBERT HILL, Esq. W.S., . . . *Appellant;*

ANDREW RAMSAY of Whitehill, Heir-at-Law of GEORGE RAMSAY, late of Whitehill, } *Respondent.*

House of Lords, 30th March 1810.

SERVITUDE OF ROAD—PRESCRIPTIVE USE AND POSSESSION—DERELICTION.—A servitude of road was claimed, where there was no writing or title to constitute the servitude, and solely on the ground of immemorial use and possession. Held, on the evidence produced, that though the possession and use were proved for a period of forty years, yet, as it was also proved, that, for a period