

carried to sustain the pursuers' title; in which I concurred, because of their possession of the pasturage; but we could proceed no further, as there was yet no warrant to discuss the reasons of reduction, that preliminary question alone being reported by Minto.—10th July, Adhered.

No. 32. 1752, June 30. HERITORS, &c. of MUSSELBURGH *against* THE
MAGISTRATES.

THE like question was reported by me on mutual declarators, touching these Magistrates' power to grant feus of their common. But the pursuers dropped it before the report, so that it was *ex parte*, and it was not said that the pursuers had any right of pasturage on the commons feued out;—and the Lords declared in favours of the Magistrates.

No. 33. 1752, July 3. BURGESSES of IRVINE *against* MAGISTRATES.

IN mutual declarators touching the Magistrates' power to let long leases of a barren common muir, (in which the Magistrates made no objection to the pursuers titles,) the Lords thought that the 36th act Parl. 3, Jas. IV. never was intended to restrain Magistrates of Burghs from letting long leases, or even feuing out the lands or waste grounds; otherwise many wastes in the different Burghs must have remained yet waste, and many barren grounds uncultivated;—or if it was so intended, yet that part of the act is long since in desuetude; and therefore found, that these Magistrates had power to let leases and grant the feus quarrelled; but remitted to hear whether they were beneficial or prejudicial to the Burgh.

No. 34. 1752, July 7, 8. TOWN of PERTH *against* CLUNIE, &c.

ALEXANDER CLUNIE and others having erected a brewery and distillery in the neighbourhood of Perth were in use of selling their ale to the inhabitants. Thereupon the Magistrates and Council made an act against the importation of such brewed ale under the penalty of L.5 for the first transgression, and the ale to be seized and confiscated, &c. Upon the first importation by Clunie they seized the ale, and the Procurator-Fiscal sued for the penalties, which the defenders advocated. The pursuers founded their powers to make the act, upon the act 154, Parl. 1592 against the exercise of Crafts in suburbs, and act 18, Parl. 1595 for settling hostellaries, and 3tio, that Barons infest *cum brueriis* can prohibit the importation of ale into their Burghs. The case was reported by Kilkerran; and the Lords unanimously found, that they had no power to make any such act, that it did not fall under either of the acts, and that Magistrates of Burghs Royal, though they have greater jurisdiction, they have no such privileges within the Burgh, as Barons infest *cum brueriis* have within their own property or Barony.

No. 35. 1752, July 10. MAGISTRATES of PITTENWEEM *against* CLELAND.

A BILL and bond of relief being granted pursuant to an act of the Town-Council in February 1743 and April 1747,—and in 1749 in July a bill of suspension passed in favours