have over the inhabitants in their property. The power here contended for by the town council appears to be contrary to the common sense of the nation, and the understanding of all the other royal burghs, who, though equally willing as the town of Perth to extend their authority, never dreamed of a power to restrain any of their inhabitants from serving themselves with the necessaries of life, as they can be best served. And last of all, the several statutes imposing the two pennies of the pint upon ale brewed, imported, and vended within the burgh, is a declaration of the legislature, that it is the privilege of the lieges in general to import ale into the burgh in the same free manner as any other commodity, not falling under the exclusive privileges of any incorporation, and there can be no corporation of brewers. (*See* This case as reported in the Fac. Col. and by Lord Kames, No 67. p. 1936.)

No 100.

Kilkerran, (BURGH ROYAL) *No* 10. *p.* 113.

1754. *November* 15.

MAGISTRATES and TOWN COUNCIL of LAUDER, *against* THOMAS BROWN.

No 101.
A royal burgh had a charter, containing a general clause, *cum omnibus annuis reditibus et possessionibus quibuscunque.* Having for upwards of 40 years exacted a toll for every loaded cart passing through the liberties, the burgh was found entitled to continue that toll.

THE Magistrates and Town Council of Lauder charged Brown for payment of a toll of two shillings Scots for each loaded cart belonging to him, and passing through the liberties of Lauder: Of this charge Brown obtained suspension.

The Magistrates, in support of their charge, produced a charter of confirmation, granted to the burgh of Lauder in 1502, by James IV. and containing a general clause, *cum omnibus annuis reditibus et possessionibus quibuscunque;* which charter was ratified by Parliament in the year 1633. They also produced, from the books of town council, a table of customs, dated in 1703, and bearing *for ilk long cart two shillings:* And they offered to prove immemorial possession of the toll demanded.

A proof was before answer granted; and the case was reported by Mr William Grant of Prestongrange, Lord Probationer.

The defender *pleaded*, in point of relevancy, 1*mo*, That highways are *juris publici*, and that a toll to be levied on them may not be granted, but by the joint authority of King and Parliament; and so the Court expressly found, 15th November 1621, Town of Linlithgow against Fleshers of Edinburgh, *voce* PRESCRIPTION.. The ratification in 1633 does not afford any argument in support of the toll; for that such ratifications passed of course, and without being particularly considered. 2*do*, *et separatim*, That the charter, on which the chargers founded, contains no special grant of tolls; and immemorial possession cannot support an exaction to which no title whatever is pretended.

Answered for the pursuers: The Crown of Scotland had an undoubted right of imposing tolls, to be levied on all carriages passing through certain places; many such tolls have been so established without the authority of Parliament.

No 101. The decision produced for the defender is either erroneous, or founded on some special circumstances omitted by Durie, (p. 3.) The grant, in favour of the burgh of Lauder, is general; but immemorial possession proves the toll in question to have been granted, and ascertains its extent.

'THE LORDS found the burgh of Lauder has right to continue the possession of levying the several tolls and customs mentioned in the act and rates of the said burgh, dated 30th September 1703; and found the letters orderly proceeded, as to the customs enumerated in the said act: But found, That the burgh has no right to exact any toll or custom on coal or lime passing through the said town and territories, in carts, on horse-back, or otherwise.'

Reporter, *Prestongrange.* Act. *Sir D. Dalrymple, J. Grant, A. Lockhart.* Alt. *W. Stewart, A. Pringle, D. Rutherford.* Clerk, *Forbes.*

Dalrymple. *Fol. Dic. v.* 3. *p.* 105. *Fac. Col. No* 116. *p.* 173.

N. B. The reason of the last part of the interlocutor was, That as to these particulars, possession was not proved.

1762. *June* 14.

JAMES EARL of MURRAY, and OTHERS, Justices of Peace in the county of Fife, with DAVID GILCHRIST, and OTHERS, Burgesses in Kinghorn, *against* The MAGISTRATES and TOWN-COUNCIL of KINGHORN.

No 102.
The magistrates of a burgh found to have no power to oblige persons plying at a ferry belonging to them, to enter burgesses; or to compel those who do not enter burgesses, to desist from plying at that ferry.

THE Magistrates of Kinghorn appointed the following regulations: 1*mo*, That each person passing the ferry upon a Sunday should pay half-a-crown over and above the ordinary freight. 2*do*, That no person within the burgh should let horses to hire without being entered burgess, and paying L. 50 Scots; and that no burgesses should let horses without allowance of the postmaster. 3*tio*, That all persons who let horses or chaises within the town, or those who being casually there took a retour hire, should pay to the town 5 *per cent.* in name of postship. 4*to*, That each ton of wine landed at Kinghorn from the passage-boats should pay five shillings of shore-dues to the town. And, 5*to*, That no person should act as a boatman till he is admitted a burgess.

An action was soon thereafter brought, at the instance of the Justices of the Peace of the county of Fife, and several of the burgesses, wherein they concluded, That the magistrates had no jurisdiction to make any acts or regulations concerning the management of the ferry, and that the regulations above-mentioned should be reduced.

With regard to the general conclusion, the pursuers *insisted*, That all matters of public police, such as ferries over navigable rivers, the management and reparation of the highways, &c. were committed, by several statutes, to the care