No. 5. 1753, Jan. 19. PROVOSTS M'AULAY and LINDSAY *against* HALL.

A DISPUTE having arisen betwixt Provosts M'Aulay and Lindsay, who had furnished mourning above L.120 at Lord Kimmergham's death, and had confirmed his library before the Commissaries of Edinburgh,—and Mr William Hall, the deceased's clerk, as trustee for sundry great creditors for sums amounting to several thousands of pounds sterling, who had confirmed before the Commissaries of Lauder,—17th January 1733 the Lords preferred the confirmation at Lauder, but remitted to the Ordinary to hear how far mournings furnished to children or servants were privileged debts, and preferable to other creditors. Upon this, by consent the books were sold, and Mr Hall paid the money to these two merchants, but took their bills for it in expectation as was said of their getting the creditors consent to their preference. Mr Hall never demanded payment, but his heir now sue,—and the defence was, that these mournings being no more than by custom was suitable at the interment at one of Lord Kimmergham's rank and station, they were properly funeral expenses, and therefore privileged and preferable. Lord Strichen, Ordinary, repelled the defence, and they reclaimed. Both bill and answers are well drawn and worth reading. My opinion was, that custom alone ought to determine what ought to be accounted funeral expenses, that mourning, hangings for the rooms, entertainment for the company, &c. were doubtless such, and privileged, and therefore such where custom required the children to be in mourning at the interment, the sons to attend the body to the grave, and not long ago the daughters, but now they must sit by the corpse and attend the chesting. I saw no reason why their mournings that they used at and before the interment should not be as much privileged as mourning hangings for rooms, so likewise of the servants, but I thought no more was privileged than what was used at or before the interment, and therefore I doubted of the Lady's mournings, who was not with her husband in Edinburgh when he died, but at Kimmergham. The President doubted if that was a good reason to make a difference, because though she were in the house, yet she does not appear. We sustained the defence for the merchants, but reserved to the pursuer to be heard whether there are any articles in the accounts that were not to be used at or before the interment.

GAME.

No. 1. 1753, Feb. 3. MR DAVID GREGORY *against* WEMYSS of Lathockar.

GREGORY having gone a fowling with a dog and gun with one Baird with him who had another gun, Wemyss met them and took Baird's gun from him as having no right to fowl. Gregory sued him before the Sheriff, who ordered restitution of the gun, and found expenses due. Wemyss advocated the cause, and offered to prove that Baird was a common fowler in terms of the act 1707, and that he killed and sold wild fowl, shot hares,