

1726. February 4. MAGISTRATES of HAMILTON against DUKE of HAMILTON.

No 47.

THE town of Hamilton was erected into a royal burgh, by a charter from Queen Mary, 1548, giving them power to chuse their own Magistrates, &c.— This charter, as it would seem, having been neglected, the town afterwards, in the year 1670, accepted of a charter from the family of Hamilton, erecting it into a burgh of regality, with a power to the Duke of Hamilton to create Magistrates, admit burgesses, &c. as in other such burghs. In consequence of this charter, the family of Hamilton continued to exercise the privileges and powers of Lords of Regality upwards of 40 years, till a declarator of their privileges, as a royal burgh, was raised, and insisted in by the town; and they pleaded, That the privileges of a royal burgh, as being *juris publici*, can neither be lost by the negative or positive prescription; the LORDS sustained the prescription in favour of the Duke, as to the way and manner of the election of the Magistrates and Town Council of the burgh. See APPENDIX.

*Fol. Dic. v. 2. p. 102.*

1729. December. NICOLSON of Glenbervie against VISCOUNT of ARBUTHNOT.

No 75.

TEINDS belonging to a parsonage, and consequently *extra commercium* before the act 1693, whether such could be carried by positive prescription, debated, but not finally determined. See APPENDIX.

*Fol. Dic. v. 2. p. 103.*

1758. July 28.

WILLIAM EARL of HOME against The OFFICERS of STATE.

No 76.

IN 1403, Alexander Home of that Ilk, the Earl of Home's predecessor, founded the provostry of Dunglas; and that foundation was confirmed by a charter under the Great Seal in 1450; and since that period, the patronage of the provostry, and prebendaries thereto belonging, was carried down in all the title-deeds of the family.

Instance of a right of patronage acquired to the Crown by the positive prescription.

William Earl of Douglass, in 1451, disposed the parish-kirk of Hutton, to the college-kirk of Dunglass, and the patronage thereof to the said Alexander Home, and his heirs and assignees. This grant was confirmed by a charter under the Great Seal in 1458.

In 1565, the Archbishop of St Andrew's granted a collation to Mr John Home, upon Lord Home's presentation, of the said provostry of Dunglas, proceeding upon the recital of the same being vacant, with all its parts and per-