

them to answer three days after service;—the answers *inter alia* objected to the competency of this by way of complaint, and of the service; but we repelled the objection, and thought it competent as a contempt, in the same way as a complaint would be for not setting march-stones agreeable to our order.

No. 27. 1747, Dec. 2. LAING, &c. *against* MAGISTRATES of SELKIRK.

THOSE Deacons pursued the Magistrates for reducing two acts of the Town-Council, the one ordering a reduction and complaint against them, at the instance of one Blackhall, to be defended by the Town's agent, and Blackhall having prevailed in that process, and got expenses awarded to him for reducing another act of Council, passing the Treasurer's accounts, wherein the Town is debited with both the expenses of defending the process, and also the expenses paid to Blackhall;—and the pursuers concluded that these acts being reduced, the defenders should be decerned to repon and restore the money to the Town, to pay it to the Treasurer, and to take his receipt for it. The defences were, that no such process was competent to the pursuers, or in this Court,—that by the act 1491, it could only be in the Chamberlain Air, and after the act 36th 1535 in the Exchequer, and after the 28th act 1693 by a Royal visitation,—which act declares it to be the prerogative of the Crown. However, it carried by a narrow majority to sustain this process at the pursuers' instance. *Me referente,—renit. inter alios, Arniston, Tinwald, et me.* I thought the Court competent if there were proper pursuers; for example, if the present Magistrates were suing the late Magistrates, or if the Crown were suing the present or late Magistrates; but though the pursuers and every Burgess has a consequential interest in all the subjects of the Burgh, yet they had no such interest as to entitle them to sue any debt to the value of 40 shillings due to the Town,—therefore I thought the pursuers had no title to sue this process. Arniston was of the same opinion as to the pursuer's title, but doubted even of the competency of the Court, and thought the jurisdiction rather in the Court of Exchequer; but thought they might apply to the Convention of Boroughs, who though they could not decide as Judges, yet if the Magistrates refused to submit to their judgment, the process might be in their name, by their lawyers;—or the pursuers might apply to the Crown, not for a Royal visitation only, which might be expensive, but for a warrant to the Advocate to pursue in this Court, agreeably to the cases quoted by me from Balfour, ult. February 1491, King against Burgh of Aberdeen, and 10th February 1441, King against Town of Elgin. July 24th We altered, and found that the pursuers had no sufficient title to carry on this action, and therefore dismissed the process, six to five and President. December 2d 1747 altered, and found the pursuers have a sufficient title.—(19th June.)

No. 28. 1748, July 12. MUIRHEAD *against* MAGISTRATES of HADDINGTON.

AN agent was employed by the Conventer at Haddington, that is the Deacon-Conventer and other Deacons, in a reduction of the election of Magistrates, in which the pursuers prevailed. The Lords found the Town not liable to that agent for his account of expenses, because not employed by the Town-Council. *2do*, Found it also prescribed, notwithstanding an act of the Town-Council in 1736 acknowledging that it was not paid. *3tio*, Found the several Corporations of Crafts not liable for that account because not employed