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 repone 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 Convenery at Haddington, that is the Deacon-Convener 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 1730 acknowledging that it was not paid. *3tio*, Found the several Corporations of Crafts not liable for that account because not employed

by them, but only their Deacons. This was as to the accounts 1719, 1720, 1721, and 1722. *4to*, Found the Town liable for the agent's expenses in defending an election wherein he was employed by the Magistrates and Council after 1723, and repelled the prescription. (Arniston thought that prescription did not take place in such accounts of Corporations where there can be no oath of party,—but others thought the act of Council 1730 sufficient interruption.) *5to*, As to expenses of defending elections in 1730 and afterwards, most of the Lords thought, that if Muirhead's employers were the Magistrates in possession, the Town was liable; but as it was said that both parties were contending for possession, they remitted to the Ordinary to enquire into that fact.—November 4th Adhered as to the 3d.—*Vide* 12th July 1748.

In respect Mr Muirhead's employers were in possession in 1731, therefore find the Town liable for his account, though his employers were in the event turned out of the magistracy.—(12th July.)

No. 29. 1749, Jan. 12. ELECTION of WICK.

BY the charter of erection of this Burgh, the Provost and Bailies were appointed to be chosen *cum avisamento et consensu Geo. Comitis de Caithness et ejus hæredum et successorum*, who were also to have the half of all sums paid for admitting Burgesses;—and till that family's affairs went into disorder the Earls were always chosen Provosts, and the Bailies chosen by poll out of a leet approved by him. But after the estate came to Earl of Breadalbane, the Provost was chosen as well as the Bailies without regard to that clause, till 1716 that by act of Convention Earl of Breadalbane was put in Earl of Caithness's place, and the former custom revived, with that only alteration. The Town now pursues declarator against Ulbster as come in Breadalbane's place, to declare that he has no right to that privilege, with sundry other conclusions. In which Earl of Caithness compeared for his interest,—and as to it two questions were argued, first, Whether it was alienable by the family of Caithness? and both Kilkerran and I thought it was, not only because we had found offices, even that of King's Usher, to be alienable, but also because this privilege was not only *hæredibus* but *successoribus*, which must signify some persons that could not be heirs; and 2dly, Here was a patrimonial estate, half of the dues of entering Burgesses. Second question, If it could be alienated, there being produced for Ulbster a charter in 1694 on sundry apprisings, containing *hæreditaria officia lie Provestriis cum privilegiis et libertatibus infra Burgum de Wick*, and parties said they were ready to produce the apprisings? I did not think that *lie Provestriis* carried this right, but I thought the word *privilegia* did. However it carried by a great majority that it was not alienable. Next we found that the list for Provost and Bailies should be approved by the Earl of Caithness; *3tio*, That Burgesses, heritors of houses in the Burgh, though not residing in it, might vote at the poll; *4to*, That a person might be Provost though not residing. (The parties agreed that honorary Burgesses could not vote at the poll, and that the Bailies behoved to be inhabitants;) and *5to*, We found that all the Councillors behoved to be also inhabitants in the Burgh, though no statute requires it, and it was the usage in this Burgh no more than in many others. But some of us thought that the charter required it, which I own I did not.—5th January 1749, On a reclaiming bill, find first the pursuers have suffi-