

of the subscribers, and also of the then present Magistrates, (against whom harning and caption had been taken out) on consigning a disposition of the Town's funds. Drummore, 31st January 1751, found the letters orderly proceeded,—and on a reclaiming petition and answers we 10th July 1752 adhered. The answers indeed add these words to the interlocutor, “against the present Magistrates,” whereby I suppose is meant the Magistrates for the time being; for the Magistrates were not only changed between the letters of harning and caption in July 1749, and Drummore's interlocutor in January 1751, but also between his interlocutor and ours; and yet the reclaiming petition seems to import that they were all found liable; and if they were not, then suppose Magistrates imprisoned for a Town's debt, they behoved to be liberated how soon they were out of office. But the case was not at all distinctly stated.

No. 36. 1752, Dec. 14. **MAGISTRATES OF STIRLING** *against* WALKER.

IN a declarator at the Magistrates' instance against the Sheriff for declaring that they had the sole power in the first instance of judging in questions of building or repairing houses in that Burgh, and that the Sheriff and his successors ought not to judge in these matters,—the Lords waved giving any general declarator, because they thought it hardly sufficient to call as defender a Sheriff whose commission was during pleasure, and that at least the Officers of State should have been called; but as the summons complained of the Sheriff's judging in a late question in repairing a house touching a servitude of stillicide, they found that he had done a wrong in judging in that question, for that the Magistrates and Dean of Guild were the proper judges in such matters in the first instance.

No. 37. 1752, Dec. 15. **TRADES OF BURNTISLAND** *against* MAGISTRATES.

NOTWITHSTANDING a decret of Session in 1681, that the Town-Council should consist of 21 persons, 14 merchant traffickers residing in the Burgh and seven trades,—and a decret-arbitral in 1728 by Dean of Guild Nimmo and Convener Keir in Edinburgh, in a submission signed by one of their Bailies for the Guildry and their Convener for the Trades,—and notwithstanding the old acts of Parliament, that officers within Burgh should be merchant traffickers residing in the Burgh; yet in respect of the set of the Burgh in 1708 recorded by the Royal Burghs in 1710 certifying the custom for 60 or 70 years before, and in respect of their practice since that time,—any nobleman or gentleman though no merchant or resider may be chosen Provost,—and that in that case he is supernumerary over and above the 21 persons;—and they thought the decret-arbitral void, because the submission was not signed by the proper parties, the Merchants and several Crafts, or the several Deacons by warrant of the Corporations. They also found that the Deacons were not *virtute officii* Councillors, but that the Council had the election of the seven Trades-Councillors.

No. 38. 1752, Dec. 26. **MAGISTRATES OF EDINBURGH** *against* MYRETON.

THE Magistrates having made an act of Council against gratis warrants to be granted to any person for importing wine free of impost on their grant in 1671 ratified in Parliament,—some wine of Sir Robert Myreton's was thereupon seized at the ports and condemned; which Sir Robert suspended, alleging that by the grant no wine was subject to