rant to the Director of the Chancery to issue new precepts to another person to infeft him in place of the Bailies. I thought if such warrant was to be granted, it behoved to be on a bill to the whole Lords. 2dly, I thought no such could be granted within a burgh, because of the act of Parliament 1st James VI. declaring all sasines null not given by the Bailie and common clerk within burgh without exception,—but that the remedy lay by horning, which the Lords might grant. However, I reported the bill, and the Lords were of my opinion, and upon report I refused the bill as incompetent. *Vide* the 13th *infra*.

The Lords having considered the bill with the petitioner's retour in the burgage lands, with the instrument against the Magistrates of Annan requiring them to infeft him, grant warrant for letters of horning for charging them in terms of the petition.—13th December.

No. 12. 1740, Feb. 22. LORD BRACO *against* TOWN of BANFF.

THE question was, Whether Lord Braco having purchased lands held burgage, and the Magistrates refusing to receive him, there lies summary complaint against them to this Court in order to charge them? and we appointed the bill to be intimated and the Magistrates to be served with a copy.

The Lords in this case, in respect the Town compeared and did not deny that resignation was made and accepted, thought the summary application competent, and found the Town bound to grant a charter in terms of the last charter of resignation in 1675, and granted warrant for letters to charge them accordingly; though if no resignation had been accepted we had great difficulty.

No. 13. 1740, Dec. 12. ELECTION of HADDINGTON.

THE question was, Whether the defenders had incurred the penalties of the act 7th Geo. II. for making a separate election at last Michaelmas, notwithstanding their process yet depending of the election 1739, and that they made no secession, and did not remove from the place of election where their majority of the Council 1739 elected at last Michaelmas—in respect it plainly appeared that process was a mere sham, and the defenders had no real intention to have it decided, but to make a pretence for a double election, in order to choose a separate delegate for the election to Parliament;—at least from the procedure in that process we strongly suspected that was the purpose. It was also a separate question, Whether only the eight persons who undoubtedly were Councillors for the year 1739 could incur these penalties, or if also the other seven who pretended to be Councillors, but were not owned by the complainers, would incur that penalty? The President was clear that the eight had incurred these penalties, since the depending process, (though not yet regularly before us) appeared to be all affectation, and so thought Dun, Drummore, and Tweddale. On first reading the act, I imagined that the act was intended *to remedy the old abuse of seceding*, and there by separating from the majority of the Magistrates and Council was meant seceding. But the President and others talked of it as a thing so certain, that making a separate election incurred the penalty without seceding, that I was willing not only to yield but to conceal my notion. But as great weight was laid on that process being affected, and however much I was convinced of the same thing, yet as it was not yet laid

before us, could not give or found any judgment upon it. I desired to know the opinion of the Court what the law as to this act would be, suppose the defenders sincere in that process, yea suppose it well founded,—and in general in every case where a new election is come on before the controversies anent the former election are finally decided either here or in the last resort,—even although the Magistrates out of possession had a decree of this Court for them stopped by an appeal,—for as there was no exception of that case in the act, if they were within the purview of it, however the Court might sustain such a favourable plea as a defence against the penalties, yet it could never legitimate the separate election made by them if the act declared it null. If, on the other hand, a separate election in such a case was not within the purview of the statute, then no case could fall under it where the former election was still *sub judice.* I received no answer till Arniston spoke, and that very fully, that for the above reason this was not within the statute; and as nothing is mentioned in the statute of depending controversies of elections, and I thought the Legislature could never mean, when the Magistrates duly elected were kept out of possession for a year, to void their election for ever, because they were not able to obtain redress before next election, therefore I thought, that according to my first notion of it, the act "by separating from," &c. meant the same with "seceding;" whereas the President's opinion was, that in the case stated, the Magistrates out of possession, though the right of election was truly with them, and it should be afterwards so found, could not make a new election without contravening this act. But upon the question, it carried that the defenders were not within the terms of this act.

No. 14. 1741, Jan. 27. ELECTION of HADDINGTON.

I WAS in the country, confined by the storm, when the first interlocutor was given, and therefore did not mark it, but it is full in the reclaiming bill which I keep. The Lords adhered to the former interlocutor, sustaining the objection that the execution was not signed by the witnesses, and found it not *now* suppliable. The word *now* was added by Arniston, because he thought in the general it was suppliable. But as the amended execution was not produced within the year of the defender's magistracy, as to which I thought it not suppliable in the general at any time after it was produced in judgment, I thought the producing it after the year did not alter the case, if it were suppliable. They adhered as to the other two points; that the execution did not bear with whom the copy within the house was left, and 3*dly*, that Brindles, one of the Councillors, was not called. They waved determining the point in the other petition, that the process was not insisted on within the year; only Arniston declared his opinion that it was a no-process; and they found the pursuers liable in expenses.

No. 15. 1741, Feb. 6. ELECTION of BRECHIN.

THE Lords found, 1*st*, that no new execution could be received. They repelled the other no-processes that the defenders were not designed, and that the execution bore *at* the dwelling houses, and not *in*, though it was delivered to the servants. But they sustained the objection, that the execution did not specify where the dwelling houses were. But they found that it can be amended, contrary to a decision I marked 23d July 1734.