

one of the Bailies not being findwellers in the Burgh, and assolzied from the complaint.—(11th June.)

No. 25. 1747, June 30. MAGISTRATES OF KIRKWALL *against* INHABITANTS OF STROMNESS.

THE Magistrates pursue the defenders as unfree traders, upon the 84th act 1503, 154th act 1592, 5th act 1672, to pay the value of all goods imported or exported, bought or sold for some years backward;—but we found that no such action does lie for the value of these goods, but only for confiscating the goods themselves; and refused a bill reclaiming against Minto's interlocutor without answers. Only Arniston, Strichen, and Monzie were for seeing.

No. 26. 1747, July 3. *ELECTION OF RUTHERGLEN.

By the set of this Burgh the inhabitants Burgesses chose by a poll eight persons, out of whom the Magistrates chose three to be Councillors, and the several Crafts chose each six persons, of which six the Magistrates chose three to be Councillors this last year. A bill of suspension was presented of the votes of 15 Burgesses because they were coaliers, and from an Ordinary in time of vacance (through inadvertence) obtained a sist. At the poll the sist was presented; however their votes as well as of all the other inhabitants were marked; but the Provost who presided at the poll, that he might neither contemn our authority, nor do injustice to the coaliers Burgesses, would not report the leets chosen by either party, and therefore he and the two Bailies chose other four Councillors *tanquam jure devoluto*. Upon complaint of this election, we all were displeas'd with the sist, as was also the Ordinary who gave it, and the President was for sustaining the election on that account. But the majority thought that that could not give a right to him and the two Bailies to choose whom they would; and therefore on the question, the election was reduced, and on a suggestion, that because of that sist several who had a right did not vote, we ordered a new poll. Then the question was as to the objection to the coaliers. I thought that as by our law they had not the free disposal of their persons, to give them votes was inconsistent with the freedom of election;—but it carried to repel the objection. It was also complain'd, that the leet of six of the weaver trade was carried by admitting two minors to vote, and we sustained the objection, reduced the election made of three of that leet, and ordered three to be chosen out of the other leet; for we thought that though a minor might be a Freeman of an Incorporation, yet he could have no vote in their affairs. In the same complaint one Hall a notary, having in a blank that was in the bill of suspension, filled up three coalier Burgesses besides the 15 that were in it when the sist was granted, we deprived him of his office, fined him 40 shillings sterling to the poor, and in the expenses of the complaint against him, for which we gave a summary warrant. And 20th Adhered as to Hall.—and 20th February We Adhered to the other interlocutor.—(15th January.)

A COMPLAINT being offer'd us, the beginning of this Session,—a complaint of the Magistrates for not duly executing the order of this Court, mentioned 15th January, in the new poll for four Councillors, which we then ordered to be served on the parties, and

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 Convenery at Haddington, that is the Deacon-Convenery 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