No. 4. 1735, July 23. JOHNSTON, &c. *against* MAGISTRATES of EDINBURGH.

THE Lords adhered to their former interlocutor sustaining the pursuer's title to pursue reduction.

No. 5. 1736, Jan. 31. M'DONALD, &c. *against* GOVERNOR of FORT-WILLIAM.

THE Lords found that there was here no incorporation, but that each inhabitant might declare his own rights and privileges; and found that the Governor having neither property nor superiority could not restrain the inhabitants from brewing, importing or selling vivers.

No. 6. 1736, July 7. CANDLEMAKERS of EDINBURGH *against* MAGISTRATES.

THE Lords refused the Candlemakers' petition unanimously, but appointed a Committee of their own number to meet with the Magistrates, and hear any just cause of complaint the Candlemakers might have against the regulation.

No. 7. 1736, July 16. NICOL *against* GROSETT.

THE Lords sustained the reason of suspension that the suspender had renounced 40 days before Whitsunday. What moved most of them was, that there was no evidence by judicial proceedings of the custom of the burgh to renounce before Candlemas. We all agreed that as to the form of warning in burgh, the custom of the burgh, and not Queen Mary's act is the rule; but several doubted whether the act was not the rule as to the time.

No. 8. 1737, Jan. 26. MERCHANT COMPANY of EDINBURGH *against* ROO.

THE Lords refused the bill and adhered.

No. 9. 1738, Feb. 1. MAGISTRATES of JEDBURGH, *Competing*.

THE question was upon the import of the act 7th Geo. II. anent a minority separating from a majority of the Council at an annual election: Whether Haswell and the others of his side separating from the rest on the 15th September fell under the act, and consequently voided Haswell's own election, and even inferred a large penalty on each of them? The Lords found it fell not under it, and therefore repelled that objection to Haswell's election, unanimously except Kilkerran.

No. 10. 1738, Dec. 13. GORDON *against* BAILIES of ANNAN.

GORDON being on brieves from Chancery served before the Steward of Kirkcudbright heir in some tenements in Annan held burgage, upon the retour obtained a precept from the Chancery to the Magistrates to infeft him, which they refused, and instruments were hereon taken,—and Gordon presented before me as Ordinary on the bills, a bill for a war-

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