

rant to the Director of the Chancery to issue new precepts to another person to infest 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 infest 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