

of the subscribers, and also of the then present Magistrates, (against whom horning 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 horning 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

impost but what was both imported and sold in Edinburgh, Leith, or other places mentioned in the grant, whereof the words were *vini importand. et vendend. intra dictam. civitatem, &c.* whereas he had imported from Dalkeith which is not within the grant,—and in fact no wine imported for private use has ever paid impost. Answered, That all wine consumed within the Town or liberties was liable to impost though not sold there; that the other parts of the grant explains it so, where the duty is payable *per venditores et quosvis alios invectores*; that a contrary sense would not only altogether elude the grant, but have the effect of destroying the port of Leith, because wines would thenceforth be imported to Prestonpans, and other places outwith the grant; that the Magistrates were willing to indulge the inhabitants when it did not much hurt the Town, and therefore gave them gratis warrants, which were unnecessary if they could import without them; but now by the great consumpt in private houses, and the small consumpt in taverns, the tack-duty is fallen one half, which obliged them to put a stop to gratis warrants; that the grant was always so understood, and that was the occasion of the decret of declarator of the privileges and immunity from that impost of the College of Justice in 1687, which was quite superfluous if all the lieges had the same immunity; that the Magistrates admitted that wine imported to Leith and again exported out of the liberties did not pay, but that all that was consumed in Leith or Edinburgh was liable. Replied, By the genius of our law at the time of the grant, what was consumed in private families did not pay even public taxes, and quoted 14th act 1661 where the duty is laid only on retailers, and if the grant gave an impost on all wine consumed in private houses, there appeared no foundation for the declarator or act of sederunt 1687, since that grant was ratified in Parliament. The case was this day reported by Lord Minto, and we unanimously repelled the reasons of suspension; and I observed that the 14th act 1661 proved quite the reverse, and that even importers and sale-makers paid for what was consumed in their own families; and the whole Shires and Burghs were assessed in lieu of malt brewed in their own families, though the tax was laid only on retailers, which showed the inaccuracy of our language. And as to the privileges of the College of Justice, that a private grant ratified in Parliament, which is always *salvo jure*, could never be understood to repeal privileges granted to any particular society, and established by public law, as ours appeared to be with respect to all burdens and duties in the Burgh, 275th (or 279th) act, 15th Parl. James VI.

No. 39. 1754, Jan. 11. ELECTION of CULROSS:

THE Colonel complained of that election as brought about by bribery and corruption, and condescended on 12 persons in the Council who had been corrupted by Colonel Haldane or some of his friends: That a friend of the Colonel's had agreed to give a bond for L.400. for the use of the Burgh, and to deposit it till after the election in the hands of John Erskine Balgounie, but knows not whether afterwards they agreed to rely on his word of honour,—and particular bribes given to each of them severally that would come out upon proof, but they could not particularly mention; and the complaint was laid on both the 2d and 16th of the King, and the complaint being by our warrant served on 30 days as directed by the act 16th. The answers objected, that the complaint did not lie on the