

No 18.

were not in a reduction of sentences of a Court, but in repressing a disorder and usurpation of a jurisdiction that wanted all foundation ; so that they were properly punishing a crime, ordaining such acts to be razed, and parties leased to be redressed ; for since the trades had no such power and jurisdiction, they could be in these particulars no more considered but as private persons ; and, if every private man, or society of men, within a burgh, should set up a Court, and assume a jurisdiction, it were very odd to think the magistracy could not prevent and punish this. And hence it also follows, that there was no necessity of a previous declarator, no more than previously to the magistrates punishing any disorder within their burgh, for which they have an inherent jurisdiction.

*Lastly*, There was produced a disclamation from John Craig, the person against whom one of the said decreets did pass ; and the suspenders *contended*, That since he is the person leased, the letters ought to be suspended.

*Answered* for the charger : That the charge was carried on in name of the magistrates and procurator-fiscal, against the deacon-convener, for assuming a jurisdiction within the burgh ; which being a crime in itself, cannot be purged by the said disclamation.

THE LORDS found the letters orderly proceeded, for razing the two decreets mentioned in the decret charged on, out of the convener's records, in regard they are pronounced by persons having no power to hold or fence courts ; reserving to the suspenders their right of making by-laws for regulating the subject matter in that decret anent the box-masters, or any other subject, for the better regulating their own corporations ; but suspended the letters for the L. 100 of penalty and L. 20 damages.

Act. *Sir Walter Pringle.*

Alt. *Arch. Ogilvie.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 117. Bruce, No 103. p. 125.*

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### SECT. III.

#### Burgh Election.

1676. July 14.

TOWN of ABERBROTHICK *against* The EARL of PANMUIR.

No 19.  
It was found that the erection of a burgh royal, with the privilege of electing their Magistrates, did not ex-

THE TOWN of Aberbrothick pursue a declarator of their right to elect their magistrates, as being a free burgh royal, and that the Earl of Panmuir had no right to elect any of them. Who *alleged*, That the Marquis of Hamilton was infest by the King in the abbacy of Aberbrothick, with express power to *elect one of the Bailies of Aberbrothick*, and by virtue thereof had been in constant possession so to elect ; and likewise, the defenders predecessors deriving right from the Marquis. It was *answered* for the pursuers, That they were at that

time but a burgh of regality, and whatsoever the Marquis, who was Lord of Erection, and came in place of the abbot, might have done in the election of a burgh holden off himself, yet now the burgh being erected into a burgh royal, holding the privilege of a burgh immediately off the King, with express power to elect their magistrates, they had thereby good right to a free election. The defender *replied*, That he having an established right before their erection, no subsequent erection could evacuate the same, which is granted *periculo petentis et salvo jure tertii*.

THE LORDS found the Earl of Panmuir's right, by infeftment and erection, relevant, and assoilzied from the declarator.

*Stair, v. 2. p. 448.*

1747. July 29.

MASON, DOUGLAS, and Others, Counsellors of St. Andrews *against* The MAGISTRATES.

BY the set of the burgh of St. Andrews, the council, by order of one of the magistrates, ought to convene on the Wednesday next to the 24th of September, and fill up the vacancies occasioned by death in the council, which consists of twenty-nine persons; and then chuse three new counsellors for the next year; and this is the first step and foundation of the election.

At the time of the election 1745, ten of the counsellors met, without a magistrate, and filled up the vacancies of the council, chose the three new counsellors, and, upon the subsequent usual days, the compound body, so made up, completed an election without the concurrence of any magistrate.

A complaint was given in against this election by some of the counsellors not present, as being carried on by a minority of the council, without any of the magistrates, who had declined acting at that time, as the rebels were in possession of the country, and threatening to come to the town; so that they were apprehensive of being disturbed, neither could the election be free.

*Answered*, That any defect in the proceeding was owing to the fraud of the complainers, there being more than a quorum of the council in town; but that faction finding they could not carry the election, had resolved not to make any; and the Bailie, who was in the concert, had refused to call a council when required; upon which the ten counsellors met, and proceeded; as they did on the subsequent meetings, which the magistrate always refused to call, as was his duty, and to which the other counsellors on the place were warned; that in law, when any matter was to be performed on a precise day, and there was no quorum, yet the persons present might proceed; much more when the want of a quorum was occasioned by the fraud of a party, wilfully absenting themselves; for this election was completed without disturbance from the rebels, who came not into the place till it was over, and all the other burghs in Fife made their election that year.

No 19.

clude the right of the Lord of Erection, who previously, by his infeftment, had power, when it was a burgh of regality, to elect one of the bailies.

No 20.

An election made on the ordinary day by the minority of a town council, without any of the magistrates, who were alleged to have absented themselves from fear of the rebels, was reduced for want of a quorum, although the absence was said to have been fraudulently concerted.