

No. 19. 1743, Nov. 24. ELECTION OF FORFAR.—BINNING *against* BINNING.

AN election of Forfar in 1741 was quarrelled, and in June 1742 the Court found a no-process, and an appeal was served, but not yet discussed. Both sides continued to make new separate elections in 1742 and 1743, but Alexander Binning continued in possession. James Binning gives in a summons complaining on the act of Parliament of the election 1743; but we find it not founded on the statute, and therefore not competent.

No. 20. 1744, Feb. 29. TOWN OF BANFF *against* CAMPBELL.

THE Lords adhered to Kilkerran's interlocutor, finding the Burgh of Banff and the present Magistrates not liable for the malversations of former Magistrates in their offices.

No. 21. 1744, July 31. OGILVIE *against* ———.

THIS building consisted of five storeys to the High Street above the causeway; but as they were obliged to have the chimney in the fore-wall, instead of carrying up a small dead stalk above the side-wall to the height and above the roof, they carried up three little gables, in which they placed garret windows on each side of the chimneys, which made an appearance of a sixth storey, but was all within the roof, and no other garret storeys; and as the declivity down the Old Provost's Close was very quick, the houses there below the roof and above the Close were seven storeys, and each storey made but one house with the fore-part of this. A bill of suspension was presented to me, which I reported, and the Lords refused the bill both as to fore-part and back-part.

No. 22. 1745, July 31. ELECTION OF INVERKEITHING.

MR JOHN CUNNINGHAM and others raised a reduction of an election of Sir Robert Henderson and others, as Magistrates of Inverkeithing, and a declarator of their own election, wherein we found last Session, that the old Deacons had right to be in Council at least till the admission of the new Deacons, and therefore allowed a proof of their being by force kept out;—and the proof of that, and of other particulars complained of, being reported, three days of this week were spent in hearing. The keeping down the old Deacons by force was clearly proved, and indeed the defenders had procured a warrant of two Justices of Peace, and the aid of Constables to do so;—but the question was as to the effect of that force? Some thought (*inter quos ego*) that that depended on the power or right these old Deacons had to act in the election; that if they had an elective voice, then that would be sufficient to annul the defenders' whole election, because in fact these old Deacons gave the pursuers the majority; but though that had been doubtful, the force used upon four electors, might bring a *justus metus* on some of the rest; but if all their right was to concur with the rest of the Council in judging the controverted elections of some of the new Deacons chosen in their place, then that force could not influence the election, because we behoved to judge whether *bene* or *male judicatum* as to these new Deacons; and our judgment must be the same in that question; whether the

old Deacons were admitted to judge *in prima instantia* or not? and in that case this was no force upon any of the electors. Tinwald again thought that, *sive sic sive secus*, force at an election was sufficient to void it, and so also seemed the President to think, and so did Drummore. As to the right itself of the old Deacons, in this Burgh no Deacons sat in Council *virtute officii* till 1742, when by an act of the Town-Council, on the application of both the Craftsmen and Guildry, and ratified by the Convention of Boroughs, they were brought into Council upon the same plan with the set of Culross, and by that set the old Deacons voted in the election of Councillors, and then the new Deacons were admitted, and they and not the old voted in the election of Magistrates. The Lord Advocate for the defenders, objected to the power of both Council and Convention to introduce the Deacons to the Council, and from some words in the acts, argued that the set of Culross was referred to not as the model of the Deacons' admission and powers in the Council, but as the model of their own election by their crafts. But the Court were pretty unanimously of a different opinion in both points, though the Convention-act was inaccurately expressed, and the set of Culross made no mention of the form of election of Deacons by their Crafts, neither did the Court regard it, that at the election 1743, when there was no dispute, and when only one of the Deacons was changed, the old Deacon did not at all come to the election, and the new Deacon voted in the choice of new Councillors, at least produced his act of admission before they were chosen, because that single act could not alter the rule prescribed by the acts of Council and Convention;—and therefore I thought that the old Deacons had also an elective voice upon the whole. We first reduced Sir Robert Henderson and other defenders their election, and next we sustained the pursuers', though not as a consequence of the other, but because the four Deacons gave the pursuers the majority in the election of new Councillors, though if the old Deacon had not an elective voice, I should not have voted for reducing the defenders'. We also reduced the defenders' election of a Deacon of Shoemakers, and sustained the pursuers', because of force, by imprisoning one of them who was for the pursuers' Deacon, and would have made a majority, but by imprisonment and hard usage was forced to vote for the defenders. We likewise found that Craftsmen, whom they called Grass-men, *i. e.* gentlemen admitted into the Crafts without trial, (which had been practised about 28 years, but voted in electing Deacons only since they got seats in Council) had no right to vote, and therefore we reduced the defenders' election of a Deacon of Weavers that had been carried by them, and sustained the pursuers' election, notwithstanding the defence that that objection was not made at the election, and there were Grass-freemen who voted on both sides.—31st July adhered.—(5th July.)

No. 23. 1747, July 2. ELECTION OF ST ANDREWS.

A REDUCTION being raised by some Councillors of an election made at Michaelmas 1745, of Magistrates and Councillors at St Andrews, because at making the election there were present only ten Councillors, whereas the Town Council is 29;—answered, there was a sufficient quorum in the Town, for there were other seven Magistrates and Councillors in the Town, who, when required, refused to attend the election,—on the contrary, combined to disappoint the election, shut up the Council-house, and went out of Town. At