

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

the hearing in presence we thought that ten Councillors could not carry on an election; but we thought that those who wilfully absented have no title to complain, and therefore ordered the complainers to condescend if there were any of the complainers who were casually absent;—and on the condescence we found four of them were not barred, and therefore, *2do*, we reduced the election. In the first I did not vote. The second carried five and the President to four. I was very unwillingly on the side of the majority. Murkle did not vote. This was January 15th; and on a reclaiming bill, June 3, we adhered to the first, and found that these four constituent members of the Council, though not present at the election, might on the statute summarily complain; but found, that 10 though a minority of the Council might make an election, and repelled that reason of reduction by the scrimpest majority. *Renit. inter alios* President *et me.* *Vide* 2d July 1747.

We altered the interlocutor of 3d June, and reduced the election made by the ten. *Renit.* Arniston, Drummore, Dun, Monzie, and Shewalton. For the interlocutor were, Minto, Strichen, Haining, Murkle, Tinwald, *et ego*, beside the President. Kilkerran was in the Outer-House, and Leven did not vote.—2d July.

No. 24. 1747, June 11. ELECTION of WICK.

ANDERSON, &c. having by summary complaint quarrelled the election at Michaelmas 1745, they raised reduction of the election 1746, as made by the Magistrates chosen in 1745. Against this last sundry objections were made, particularly that the whole Burghesses should have been called, because, by the set, the election is made by them out of a leet made by the Magistrates of the preceding year; but we repelled it, since by calling the Magistrates and Council the Burgh itself was called. But we sustained other two objections, viz. that the executions did not express the names of the whole defenders in terms of the act 6th 1672, which was material here, because if any one was not called he could not insist against the rest; 2dly, That after it was executed against one of them, the summons was altered and cut; and in respect of this judgment in the reduction of the election 1746, we found no use for deciding in the complaint of the election 1745, because it could now have no effect, since the election 1746 was now by the acts 7th and 16th Geo. II. become unquarrellable. (11th February.)—But upon reclaiming bill and answers we thought that the reduction did not fall under either of these acts, and might yet be brought, though the two months are elapsed; and that therefore the complainers might yet insist in their complaint of the election 1745. (28th February.)—The same day we gave the like judgment as to the complaint of the election of St Andrews in 1745, and found that we must yet decide on it, though there has yet been no complaint or reduction of the election 1746.

When the Lords proceeded to advise the complaint itself I was in the Outer-House, and at my return heard the President giving his opinion that the faculty or privilege given the Earl of Caithness, would not go to singular successors, and that it was still in the family of Caithness; but as there was here no declarator, and Ulbster and his authors had been long in possession, therefore they repelled that objection, and for the same reason of long usage repelled the objection, of the Provost and