

No 296. when they had raised and were insisting in one; and in the mean time, the interlocutor ought to stand, that there was no necessity for determining in the complaint.

No reduction was now competent, but barred by both these acts; by the 16th Geo. II. the limitation introduced by which would be of no effect if confined to summary complaints, while the same cause could be brought in by summons. An election made by those who had no power, was certainly a wrong done at an election, though, if the electors were unanimous, as it could only be complained of by some other burghess, it behoved to be by ordinary action, yet still subject to the prescription of time; but more expressly was a reduction barred by the act 7mo Geo. II. limiting ordinary actions within eight weeks.

THE LORDS found, that they might proceed to determine the election made in the year 1745, notwithstanding there was no reduction subsisting of the election made in the 1746.

Act. *H. Home.* Alt. *W. Grant.* Clerk, *Gibson.*
Fol. Dic. v. 4. p. 150. D. Falconer, v. 1. No 175. p. 234.

. See No 8. p. 1842, *voce* BURGH ROYAL.

No 297. 1747. February 28. MASON against The MAGISTRATES of ST ANDREWS.

THE like determination to that in the preceding case was given on a complaint against the election for St Andrews made at Michaelmas 1745, though there was no complaint or reduction yet raised against that made 1746.

Act. *Ferguson.* Alt. *W. Grant.* Clerk, *Kirkpatrick.*
Fol. Dic. v. 4. p. 150. D. Falconer, v. 1. No 176. p. 235.

. See No 20. p. 1871, *voce* BURGH ROYAL.

No 298.

Whether after witnesses have deponed, the pursuer may recur to the defender's oath?

1747. June 24. LAW against LUNDIN and LUMSDEN.

JEAN LAW, as executrix-dative of David Bayers her husband, brought an action against Lundin of Lundin and Lumsden of Innergelly, for payment of two different accounts, as due to her deceased husband, consisting of dales, timber, iron, &c. furnished; in which there was an act pronounced, finding the libel and accounts therein referred to relevant to be proved *prout de jure*, and granting diligence.

In consequence of this, the pursuer adduced two witnesses, one on Lundin's account, who knew nothing of the matter, another on Innergelly's, who proved the account, so far as the testimony of one witness could go. And when the act came to be called, in order to a second diligence, the pursuer passed from