

1764.

NICOLSON *against* MILLAR, Glazier.

MILLAR, a burghess of Edinburgh, and freeman glazier, member of Mary's Chapel, had his residence at the head of the Canongate, without the limits of the Royalty. He had, for a course of years, practised his trade in Edinburgh, paid the entries, quarterly dues, &c. as any other member of the incorporation, entered his apprentices, voted in all elections, and been in the long leet for deacon. He was elected deacon, *anno* 1763; and being objected to on account of non-residence, the Magistrates, judges in the first instance, and afterwards the Lords, sustained the objection, and preferred his competitor Nicolson, though elected by a confessed minority. It is to be observed, that, at the time of election, Millar was not only a resident in Canongate, but deacon of a corporation there, kirk-treasurer, stent-master, and constable.

A like case was given 1774, in the case of Brechin. In this case the Lords disallowed of the votes of all those who were not residents within the burgh, though several of them resided close by it, in a village a few yards only from it, without the royalty, but had been in use to practise within the burgh without challenge.

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 LINLITHGOW.

1775. *April* . ANDREW CLARK and Other MEMBERS of the COUNCIL of LINLITHGOW *against* GILLIES, &c.

At the election of Magistrates and Councillors for the burgh of Linlithgow, at Michaelmas 1775, three persons were elected councillors, non-residents in the burgh. A complaint being given in; pleaded, in defence, *1mo*, That, neither by the set of this burgh nor by the law of the land, is residence a necessary qualification in the common councillors of a burgh. See case of *Forres*, 7th January 1757. *2do*, Various instances were condescended on, where, in this burgh, non-residents had been elected councillors without opposition; and, *3tio*, The complainers, having themselves concurred in the election of these gentlemen at Michaelmas 1774, could not now complain, and were barred *personali objectione*; for the election had been unanimous. In this cause, therefore, it became the subject of debate whether actual residence was not an implied essential qualification in a councillor. For, to the *second* defence, the fact was denied, at least the instances were so few as not to authorise such a deviation from the legal constitution of the burgh. And, as to the *third* defence, one of the complainers was absent: so at no rate could the personal objection apply to him.

As to the point of non-residence of councillors. If it is to be considered how far it is requisite by the common law of Scotland, the set of the burgh is