

1747. *January 15.—July 2.* ELECTION OF ST. ANDREWS.

No. 23.

SUMMARY complaint being made of an election by less than a quorum, *i. e.* than a majority of the Council, which consisted of 29 members, whereas only 10 made the election; we thought the reason of reduction relevant, but that such members as were in town and wilfully absented, though called to Council, were barred *personali exceptione* from objecting; but there being four absent members not in that case, we found them not barred, and that the complaint was competent at their instance upon the statute, though not present at the meeting; and therefore reduced the election; and on a reclaiming bill, adhered to the interlocutor, finding the complaint competent at their instance; but found that even 10 might proceed to make the election on the stated day, though not a majority of the Council. But, 2d July, we altered the last interlocutor, and adhered to the interlocutor of the 15th January, and reduced the election.

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1747. *June 11.* ELECTION OF WICK.

No. 24.

A COMPLAINT being made on the act 16th Geo. II. of the election of this Burgh 1745; before it was discussed the election 1746 supervened, whereof reduction was raised in due time; but some objections were made to the process; *1mo*, that though by the set the election was partly by poll of the hail Burgesses, they had not been all called; but that we repelled because the Magistrates being called, the Burgh itself was called. We repelled the like objection to a reduction of an election in Rutherglen; but we sustained certain other objections to the execution whereby that reduction fell; and therefore it was alleged that they could not now insist in their complaint of the election 1745, because the reducing that election could have no effect, the election 1746 being now unquarrellable; and we accordingly so found, 11th February 1747; which we did also in the like complaint of the election 1745 of St. Andrews, because no reduction had been raised of the election 1746; but upon a reclaiming bill we altered as to both, for we thought that the elections 1746, and reduction thereof, if made by persons who were themselves no Magistrates or Councillors, fell under the acts 7th and 16th Geo. II, and therefore found that we must yet determine in the complaint of the election 1745, 28th February 1747. In that of Wick, the objections were, *1st*, that the privilege given the Earls of Caithness, that the Magistrates must be chosen with his consent, did not

descend to Ulbster, his singular successor; and *2do*, That the Provost and one of the Bailies were not residenters within the Burgh. We repelled both these, because of Ulbster's, and before him Earl Breadalbane's long possession, and inveterate usage of the Burgh. *Vide* No. 29.

No. 24.

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1747. *June 30.*

MAGISTRATES of KIRKWALL *against* INHABITANTS of STROMNESS.

BURGH ROYAL may seize and confiscate goods imported or exported by unfree traders, but cannot pursue them in an ordinary action for the value of such goods not seized or arrested by them.

No. 25.

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1747. *July 3.*

ELECTION of RUTHERGLEN.

WE having on a complaint on the act 1743, set aside the election of four Councillors that by the set ought to be chosen by poll of the unincorporated Burgesses, and ordered a new poll; a new complaint was made of that second poll, which we ordered to be answered eight days after service; and in the answers, objections were made on that act against the competency of the complaint as being too late in the time of answering; but we found it not within the act, and repelled the objection, and thought the complaint equally competent, as it would be against a Sheriff for wrong executing our orders in setting march stones.

No. 26.

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1747. *December 2.*

LAING, Deacon of Selkirk, and Other BURGESSES, *against* MAGISTRATES of SELKIRK.

MAGISTRATES of Burghs cannot be sued for mal-administration of the common good of the Burgh, at the instance of any number of Burgesses, not even of the whole Deacons of Crafts, even though some of the pursuers have born office in the Burgh; though, 19th June 1747 we sustained process; yet afterwards we found the pursuers' had no title, and dismissed it. We again sustained the pursuers title by a narrow majority, but this afterwards stopped on a petition. (See NOTES.)

No. 27.