

impost but what was both imported and sold in Edinburgh, Leith, or other places mentioned in the grant, whereof the words were *vini importand. et vendend. intra dictam civitatem, &c.* whereas he had imported from Dalkeith which is not within the grant,—and in fact no wine imported for private use has ever paid impost. Answered, That all wine consumed within the Town or liberties was liable to impost though not sold there; that the other parts of the grant explains it so, where the duty is payable *per venditores et quosvis alios invectores*; that a contrary sense would not only altogether elude the grant, but have the effect of destroying the port of Leith, because wines would thenceforth be imported to Prestonpans, and other places outwith the grant; that the Magistrates were willing to indulge the inhabitants when it did not much hurt the Town, and therefore gave them gratis warrants, which were unnecessary if they could import without them; but now by the great consumpt in private houses, and the small consumpt in taverns, the tack-duty is fallen one half, which obliged them to put a stop to gratis warrants; that the grant was always so understood, and that was the occasion of the decret of declarator of the privileges and immunity from that impost of the College of Justice in 1687, which was quite superfluous if all the lieges had the same immunity; that the Magistrates admitted that wine imported to Leith and again exported out of the liberties did not pay, but that all that was consumed in Leith or Edinburgh was liable. Replied, By the genius of our law at the time of the grant, what was consumed in private families did not pay even public taxes, and quoted 14th act 1661 where the duty is laid only on retailers, and if the grant gave an impost on all wine consumed in private houses, there appeared no foundation for the declarator or act of sederunt 1687, since that grant was ratified in Parliament. The case was this day reported by Lord Minto, and we unanimously repelled the reasons of suspension; and I observed that the 14th act 1661 proved quite the reverse, and that even importers and sale-makers paid for what was consumed in their own families; and the whole Shires and Burghs were assessed in lieu of malt brewed in their own families, though the tax was laid only on retailers, which showed the inaccuracy of our language. And as to the privileges of the College of Justice, that a private grant ratified in Parliament, which is always *salvo jure*, could never be understood to repeal privileges granted to any particular society, and established by public law, as ours appeared to be with respect to all burdens and duties in the Burgh, 275th (or 279th) act, 15th Parl. James VI.

No. 39. 1754, Jan. 11. ELECTION of CULROSS:

THE Colonel complained of that election as brought about by bribery and corruption, and condescended on 12 persons in the Council who had been corrupted by Colonel Haldane or some of his friends: That a friend of the Colonel's had agreed to give a bond for L.400. for the use of the Burgh, and to deposit it till after the election in the hands of John Erskine Balgounie, but knows not whether afterwards they agreed to rely on his word of honour,—and particular bribes given to each of them severally that would come out upon proof, but they could not particularly mention; and the complaint was laid on both the 2d and 16th of the King, and the complaint being by our warrant served on 30 days as directed by the act 16th. The answers objected, that the complaint did not lie on the

act 2d Geo. II. because not charged to be committed at the election to Parliament; *2do*, That act gives no authority for summary complaint, the words being summary action on complaint; *3tio*, No action for the penalty on the act 16th, because though it extends the act 2d Geo. II. to electors of delegates, yet *non constat* that the respondents shall be such; *4to*, Still the trial must be by ordinary action in terms of the act *2do Regis*; *5to*, No process for annulling the election on the act 16th *Regis*, because not said to be done at the election; *6to*, Some of the Council disputed even the relevancy, that bribery and corruption was not relevant to reduce an election, but only to punish the persons; *7mo*, Not relevant without specially condescending on persons time and place. We repelled all the no-processes, and hitherto it could not appear whether there was place for the fines of L.500 libelled, till a new Parliament should be called,—and the bribes given particular persons were left too general,—yet as one was sufficiently condescended on to reduce an election, we thought we could not refuse the complainers an opportunity of proving other bribes to particular persons. Therefore we pronounced an act before answer.

No. 40. 1754, Feb. 27. GLASS *against* MAGISTRATES OF ST ANDREWS.

GLASS and others presented a complaint 18th December that the Magistrates of St Andrews after finishing the several steps of the annual election whereof the last was 8th October last, three of the Councillors declining to accept, at a private meeting where only 15 or 16 were present without giving notice to the other Councillors what they were to do, chose three new Councillors not of the Old Council agreeable to the set, but of Guild-Brethren who had not been in Council. Answered, 1st, Not competent because the remedy provided by the act 16th Geo. II. concerns only annual elections, and must be brought in two calendar months. 2dly, Not relevant, because after the annual election is over, the filling up of vacancies by death or otherwise is an act of ordinary administration, and may be done *quandocunque*. We all agreed that it was not competent because the complaint was not within two months of the last step by the set of the annual election, and accordingly found it not competent; and the Court seemed also clear that it was not relevant, but of that I had some doubt, for I thought there was a difference betwixt a vacancy by death or by deprivation, and the case of the person elected his not accepting; for if acceptance is necessary the election is not completed till he accepts, in the same way as if one incapable were chosen; but we did not determine that point.

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CAUTIO JUDICIO SISTI ET JUDICATUM SOLVI.

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No. 1. 1743, Dec. 13. CAPTAIN DUNDAS *against* M'LEOD.

THE question was, Whether caution found in the Admiralty-Court *judicatum solvi* subsisted, though the defender died before decret but after liti-contestation and proof? 2d, Whether a foreigner being heir of blood to such deceased defenders who are not otherwise within our jurisdiction, can be habilely called to make that caution subsist. Against the