

No 24.

pleted as soon as possible, there can be no good-reason for a delay, seeing there is no legal obstruction against proceeding forthwith to complete the election. What if a man be brought into a town-council who is afterward found incapable; a papist for example? Such mistake will not void the election. The Court of Session, as a court of equity, will interpose its *nobile officium* and appoint a day for completing the election.

The Court, notwithstanding, declared the election totally void, and refused to sustain the imperfect election made by the plaintiffs.

It was generally agreed, that an imperfect election is not void; but that if by any chance the election become imperfect, it may be supplied, as in the example above given, where a papist happens by mistake to be chosen a magistrate or counsellor. But the Court thought it was assuming too much power to name a day for completing an election, which was begun indeed on the regular day, but not finished or completed. And here the plaintiffs, instead of proceeding to name new counsellors on their part, stopped short, and satisfied themselves with protesting against the election of the counsellors named by their antagonists. *2dly*, They were guilty of a still greater blunder, which was to chuse for a Bailie, Colin M'Kenzie, not a member of the council, but only one of the four brought in by Colonel Scot, who were all set aside as unduly elected. And consequently, the nomination of him as bailie, must also be set aside, since he was not a member of the town-council. So here the election made by the plaintiffs was imperfect even as to the magistrates, who are necessary for the ordinary government of the town, and therefore indispensable. It was concluded that an election so imperfect must be void, so as to make room for a poll-election.

Sel. Dec. No 156. p. 216.

1761. *March 12.*

CAPTAIN HALDANE, &c. *against* ADMIRAL HOLBURN, &c.

No 25.
Bribery in a Michaelmas election of a burgh, can only disqualify the bribers and the bribed. But an election carried by force, is *funditus* reducible.

THERE being a competition betwixt Captain Haldane and Admiral Holburn about the town of Inverkeithing, with a view to the approaching Parliament, the Admiral and his party having the greater number of votes got possession of the magistracy; which occasioned a complaint to the Court of Session by the Captain and his party, insisting that the election of their competitors was brought about by force, and also by bribery and corruption; and concluding, that the election of the defenders should be reduced, and that the election of the plaintiffs should be sustained, as having the majority of legal votes.

A proof being admitted to both parties, it was clearly proved against Admiral Holburn, that he had overawed the election by bringing into the town several press gangs, which he employed to keep under confinement some of the electors, and to terrify others; and also, that he had been guilty of gross bribery. But

then, on the other hand, it is proved against Captain Haldane, that he also had been guilty of bribery.

No 25.

In advising this proof, the Judges were unanimously of opinion, *imo*, That bribery can have no further effect than to disqualify the bribers and those who are bribed. *2do*, That where force is used, as there are no means for ascertaining what influence it has upon the election, Judges must either give it no effect at all, which never can be right, or give it a total effect to reduce the election *funditus*. Upon this ground, the Court had no difficulty to reduce totally the election of the Admiral and his associates. As to Captain Haldane's election, several of the Judges inclined to support it. For, laying aside the members of his party who either offered bribes or were bribed, it appeared that a sufficient number remained to constitute a magistracy and council. Though Captain Haldane, elected provost, was disqualified by bribery, yet the election might stand, because there was no objection to the other office bearers; and there remained of counsellors untainted more than is required by the set of the burgh. And supposing the provost to be a necessary member, there was no difficulty to elect a provost *de novo*, precisely as where a provost duly elected happens to die during his office. But the plurality, impressed with a hatred to bribery imperceptibly working in their minds, refused to sustain the Captain's election. And by that means the town was left to a poll-election.

Sel. Dec. No 179 p. 145.

1775. January 24.

JAMES ANDREW, and Others, Merchant-Counsellors of the Burgh of Linlithgow, and THOMAS HENDERSON, Deacon of the Incorporation of Weavers there, against HENRY GILLIES, Provost of Linlithgow, and Others.

No 26.

THE set or constitution of the burgh of Linlithgow, approved of by the Convention of the Royal Boroughs in 1709, declares, ' That the whole number of the magistrates, merchant-counsellors, and deacons of crafts, consists of twenty-seven persons, viz. The provost, four bailies, the dean-of-guild, treasurer, twelve merchant-counsellors, and eight deacons, viz. of the smiths, taylor, baxters, cordiners, weavers, wrights, coopers, and fleshers: The provost, bailies, dean-of-guild, treasurer, and twelve counsellors, are to be of the estate and calling of merchants, or of such other burgesses as are not incorporated with the trades.'

Found that non-residence was no objection to the election of a burgh-counsellor.

At the annual election of the council of this burgh, which happened 24th September 1774, among the twelve persons chosen merchant-counsellors for the ensuing year, were Thomas Dundas, John Cocks, and Thomas Cornwall. In November thereafter, James Andrew, &c. presented a petition and complaint to this Court, founded upon the statute, the 16th of the late King, for redress of an alleged wrong committed in the election of magistrates and counsellors of