

1761. August 4.

Captain ROBERT HALDANE, and Others, *against* Admiral FRANCIS HOLBURN, and Others.

In November 1760, a petition and complaint was preferred to the Court in the name of Captain Haldane and Others, setting forth, that Admiral Holburn pretended Provost, and certain other persons pretended Magistrates and Councillors of the borough of Inverkeithing, had procured themselves to be elected into these offices at Michaelmas 1760, by the most unlawful means of bribery, force, and violence; and insisted that their election should be declared void; and that the election of the complainers, though made by an apparent minority, ought to be supported and declared.

Answers being made to this complaint, a proof at large was allowed to both parties; and upon the 11th of March 1761, judgment was pronounced by the Court in the following terms: 'THE LORDS having heard the petition and complaint of Captain Robert Haldane and Others, with the answers made thereto for Admiral Francis Holburn and Others, writs produced, and parties procurators thereon, they find, it proved, That the election made at Michaelmas last, by the persons complained upon of Magistrates and Councillors for the borough of Inverkeithing, was brought about by means of force, bribery, and corruption; and therefore find the same void and null, and reduce, decern, and declare accordingly; but refuse to declare the persons voted by the complainers to be duly elected Magistrates and Councillors of said borough, and supersede the consideration of expenses, and whether any censure is to be inflicted on any of the parties in this cause, until the 16th of June next, without prejudice to either party to extract this decret in the mean time.'

This decret was immediately extracted by Admiral Holburn and his party; but, in the beginning of summer-session 1791, a petition was preferred by Captain Haldane and his friends, praying an alteration of that part of the judgment by which the Court had refused to declare their election.

*Objected* to this demand; That a petition was not competent after extract.

*Answered* for the petitioners, *1mo*, Although in the special circumstances of this case, the Court allowed either party to extract, probably from a desire that the judgment might have effect in the interval, it could not be intended to debar either of them from the common privilege of a review, especially as the question is not dismissed from the Court, several points being laid over.

*2do*, That part of the judgment refusing to declare, expresses no decerniture; it is therefore a bare interlocutor, not a decret. The word decern is subjoined to the reduction of the defender's election, but seems to have been purposely left out from the other part of the interlocutor; and therefore, as there is no decret, the interlocutor, though extracted by Admiral Holburn and his party for a particular purpose, is still subject to review.

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*3tio*, Matters were artfully managed by the other party, so that there was not sufficient time for full pleadings or deliberation upon so important and delicate a question; and in other cases of a similar nature, the Court has received petitions for review after extract. Thus, in the case of Mortimers, co-heiresses of Auchinbady, against Hay of Montblairy, a petition, complaining of a decret of ranking, pronounced after a dependence of many years, was received, and, upon full deliberation, the decret was reduced. And in the case of Lord Crawford, the Court likewise received a petition against an extracted decret of ranking and sale; and the decret was finally reduced in the House of Peers. See APPENDIX.

*Replied, imo*, The judgment of the Court leaves none of the points of the cause undetermined, so far as respects the merits of the election; and the supposal, that it was not intended to stop all further litigation, is somewhat strange, and, in effect, expressly contradictory to the words of the decree.

*2do*, The want of the word *decern* is of no consequence. That word was necessary as to the election of Admiral Holburn and his party, because the judgment was reductive, and a voidance of what they were in possession of; but, with regard to the election of the petitioners, it was altogether unnecessary; they were not in possession; they had indeed the figure of an election; but it required the authority of the Court to make it effectual; and as that authority was refused, it fell to the ground of course, and required no decretory words to void it.

*3tio*, The cases of Mortimers and the Earl of Crawford do not apply. Those decreets were most irregularly extracted, and were attended with many particular circumstances, none of which occur in the present case.

“ The Lords refused the petition as incompetent.”

For the petitioners, *Garden*.

For the respondents, *Montgomery, David Dalrymple, Clerk, Gibson*.

*A. W.*

*Fol. Dic. v. 4. p. 152. Fac. Col. No. 59. p. 142. & 349.*

This case was appealed:

1761. February 11.—The House of Lords ORDERED and ADJUDGED, that the petition and appeal be, and the same is dismissed this House; and that the appellant do pay to the respondent the sum of thirty pounds costs, in respect of the said appeal.

1789. November 17. TOWN-COUNCIL of ROTHSAÿ against NIEL MACNIEL.

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A decree having been extracted, before expenses,

A COMPLAINT at the instance of Macniel, a councillor of the burgh of Rothsay, against the election of its magistrates and council, was dismissed, and costs of suit, according to the terms of the statute of 16th Geo. cap. 11. awarded. Be-