My Lords, this case, in my judgment, affords a question of very great importance in every way of considering it; but, in a case of this nature, in which it appears to me that the Court of Session, in all human probability, must understand a matter of practice of this sort better than we can understand it; and there being great inconvenience, either in holding that they are right, or that they are wrong, it does not appear to me that it is possible for me to represent to your Lordships that I can form so clear an opinion that they are wrong as to take upon myself to advise your Lordships to reverse the judgment. I should, therefore, propose to your Lordships, that the judgment should be affirmed, and that the cause should be sent back to the Court of Session, to proceed as to the matter of James M'Bain, the other party, according to the reservation in the interlocutor, as they should be advised. Having stated this as my judgment upon this extremely difficult question, and as there are great difficulties, in the one or the other view of the case, it does not appear to me that this is a case in which your Lordships ought to give costs. Feb. 22, 1827.

Appellant's Authorities.—Stair's Inst. 1. 12. 12.—Ersk. 3. 3. 33.—O'Haggen, July 31, 1761. (4644.)—Hope, June 10, 1797. (4646.)—Ivory's Forms, Vol. 1. p. 162.—Scott, Jan. 29, 1823.—(2 Shaw and Dunlop, No. 152.)—Ewing, Nov. 28, 1823.—(2 Shaw and Dunlop, No. 521.)

Respondents' Authorities.—7. Geo. II. cap. 16. § 7.—16 Geo. II. 2. § 24.—14 Geo. III. c. 81.—Bell's Election Law, p. 493.—Campbell, June 24, 1814. (Fac. Col.)—Bank. Inst. 4. 3. 26. &c.—Stewart, Feb. 3, 1681. (353.)—Butler, July 31, 1708. (356.)—Dundas, July 20, 1780. (8837.)—Davidson, July 6, 1802. (8842.)—M'Innes, June 3, 1813. (Fac. Col.)—Cameron, Feb. 28, 1818. (Fac. Col.)—M'Coll, Jan. 17, 1822. (1 Shaw and Dunlop, No. 284.)—Taaffe, Feb. 22, 1822. (1 Shaw and Dunlop, No. 387.)—Hamilton, May 18, 1822. (1 Shaw and Dunlop, No. 477.)—Gibson, Dec. 17, 1822. (1 Shaw and Dunlop, No. 90.)—Scott, Jan. 29, 1823.—(2 Shaw and Dunlop, No. 152.)—Grant, Nov. 30, 1825. (2 Shaw and Dunlop, No. 190.)—Paxton, 1749. (16121.)—Gray, Feb. 24, 1804. (App. No. 15. Burgh Royal.)—Speirs, March 3, 1826. (4 Shaw and Dunlop, No. 341.)

JAMES CAMPBELL—RICHARDSON and CONNELL, *Solicitors.*

JAMES GARDNER and Others, Appellants. No. 39.

JAMES REEKIE and Others, Respondents.

Burgh Royal.—Set.—Usage.—The Court of Session having found that there was not sufficient usage established to modify the written set of a Royal Burgh, the House of Lords remitted to make further inquiries.

BY the set of the burgh of Kilrenny, dated 5th September 1710, the election of Bailies and Treasurer is declared to proceed in this manner:— March 23, 1827. 1ST DIVISION.

'Three days before the third Thursday of September, which 'is the day fixed for the said election, the bailies cause their

March 23, 1827. 'town officer, by tuck of drum, make intimation to the haill 'inhabitants, requiring all habile burgesses within the burgh to 'repair to the tolbooth upon the prefixed day, and there give 'their respective votes in the election of bailies and treasurer 'for the ensuing year; it being the custom of the said town, 'ever since its erection into a Royal Burgh, to elect their bai- 'lies by a vote of the haill burgesses that will qualify in terms 'of law. In obedience to which intimation the haill burgesses 'convene accordingly, about nine o'clock in the morning; but, 'before election, the old bailies and council convene in the 'council-house, and take in the treasurer his accounts of intro- 'missions, with the town's patrimony that year; which being 'done, and him discharged, they immediately nominate a new 'council for the ensuing year, and thereafter ordain all the 'burgesses that are to vote to qualify according to law; which 'being also done, they proceed to elect; and first the bailies 'give in a leet of nine persons, whereof they themselves are 'always three, out of which they are to choose the three bailies 'for the year ensuing; and the treasurer gives in his leet of 'three persons, whereof he himself is always one, out of which 'they are to elect their treasurer for the said year; which being 'read over in presence of the council, and approven of by them, 'is read publicly in audience to the haill burgesses that are to 'vote; this being done, the clerk is appointed to sit within the 'council-house and mark the votes, there being always one of 'the council appointed to oversee his right marking; and ac- 'cordingly, first the bailies, then the treasurer, council, and 'thereafter the haill qualified burgesses, one by one, give their 'several votes for the bailies and treasurer for the said ensuing 'year, and the persons chosen by plurality of votes, together 'with the new council, immediately convene within the coun- 'cil-house and accept of their respective offices, and give their 'oaths de fideli administratione, the same being tendered to the 'three bailies by the clerk, and by them first to the treasurer 'and then to the council; which being done, they adjourn.

'This form and manner of election hath always been prac- 'tised and made use of within the said town of Kilrenny ever 'since the erection thereof into a Royal Burgh, as will appear 'by the records of council thereof.'

At Michaelmas 1823, an election took place of Magistrates of the Burgh, against which Gardner and others, who were burgesses, presented a petition and complaint to the Court of Session, alleging, that for a long period of time, three separate and distinct leets had been made—the first containing three names, out of which the first bailie, or chief magistrate, was chosen;

the second, also containing three names, out of which the second bailie was elected; and the third, likewise containing three names, from which a choice was made of the third bailie; and they rested their complaint on these grounds:—

'1st. The magistrates and council, instead of sending down 'to the burgesses three separate leets of three persons each, 'from which the burgesses might choose at once who should be 'first, second, and third bailies respectively, sent down only one 'leet of nine persons, from which the burgesses were merely 'permitted, as it were, to return a shortened leet, or, in other 'words, to make a general choice of three persons, without a 'special reference to the individual office to be held by any of 'the three. The leet thus sent down was as follows: "James '"Reekie, Andrew Crawford, John Morris, John Davidson, John '"Marten, John Reid, James Lothean, John Lyall, and John '"Reekie." The three persons returned were Andrew Crawford, 'John Morris, and James Reekie. But it is submitted, that as 'these three persons were chosen from an illegal leet, as they 'were not named individually to the respective offices which 'they were to fill in the magistracy, and generally, as they were 'returned contrary to the terms of the set as fixed by imme-'morial usage, their appointment or election was illegal or null 'and void.

'2d. The magistrates and council having thus obtained a ge-'neral return of three individuals, usurped to themselves the 'power of nominating therefrom as they pleased the individuals 'so chosen, to their respective offices of first, second, and third 'bailies. Now, even if it could be supposed to be legal to make 'the burgesses to elect from one leet of nine, in place of three 'leets of three persons each, still it is submitted that the nomi-'nation of the individuals elected as first, second, or third bai-'lies respectively, ought to have been regulated according to 'the plurality of votes as given by the burgesses, and that the 'magistrates and council ought to have had no control over 'this matter. But although by the poll of the burgesses, 'which has also been recovered by virtue of your Lordships' 'order already referred to, Andrew Crawford and John Morris 'appear to have had fifty-seven votes, while James Reekie had 'no more than thirty; yet the magistrates and council, contrary 'to the rights of the burgesses, and to the immemorial usage 'and set of the burgh, appointed James Reekie (who had fewest 'votes) to the office of first bailie, and Andrew Crawford and 'John Morris (who had most votes) to the office of second and 'third bailie respectively.'

March 23, 1827. They therefore prayed the Court 'to find the election of Ma-'gistrates and Council, which had been made at Michaelmas '1823, to have been illegal, contrary to the set, laws, and con-'stitution of the said burgh, and the laws of the land, and ab-'solutely null and void, and to reduce and set aside the same 'accordingly,' &c.

In answer to this complaint, Reekie and others, who had been elected Magistrates and Councillors, stated that there was no such usage as that which was alleged; that the set was the governing rule of election; that, with a few exceptions, a leet of nine names had been invariably presented to the burgesses, without reference to the offices of first, second, and third bailies; and that even if the election had taken place in the mode contended for by the burgesses, the result would have been exactly the same.

The Court, on the 8th of July, 1824, dismissed the complaint, and found Gardner and others liable in expenses. Against this interlocutor they presented a petition; on advising which, with answers, their Lordships ordained them to give in a condescendence of their averments, and thereafter, on resuming consideration of the case, their Lordships, before answer, 'remitted to 'Mr Archibald Swinton, writer to the signet, to examine the 'whole record books of the burgh of Kilrenny, and also the poll 'books for the period subsequent to the Union, down to the pre-'sent time, so far as the same are in existence, and to report to 'the Court, on or before the third sederunt day in November 'next, everything occurring to him to be material to the issue, 'and appearing from the said books, in relation to the practice 'of the burgh, regarding the mode of framing and giving out 'the leets, and also respecting the mode of conducting the elec-'tions in said burgh.'

Mr Swinton accordingly made up an investigation, and after detailing the facts, he reported, 'that in so far as I can judge 'from the evidence afforded by the sederunt books and poll 'books of the burgh, it appears to me, that according to the 'original set of the burgh, and the usage which followed upon 'it for the first twelve years after the Union, the practice was, 'in choosing the bailies, to make up one general leet of nine 'persons, and for the burgesses to vote upon that leet, without 'any references to the offices of first, second, and third bailies; 'but that it afterwards came to be the usage to subdivide the 'general leet into one of three trios, each trio containing a bai-'lie's name and two nominees; and that, in giving their votes, 'the burgesses voted for one or other of the three persons named

'in each leet, but never for more than one; so that the three March 23, 1827.
'persons reported by the clerk to have the plurality of votes,
'must necessarily have been taken each out of a separate trio;
'whereas, according to the mode followed at the election com-
'plained of, the votes of the burgesses were taken on one gene-
'ral leet, without reference to the places of first, second, or third
'bailie. In the one way, there is no doubt that the burgesses
'have it in their power, much more than in the other, to bring
'in whom they please to be chief magistrate, because they have
'an opportunity of knowing who are the three persons in that
'bailie's leet, and for voting accordingly for one or other of
'them; and thus they have, in so far, a privilege which may be
'considered of some importance to them, as the first bailie in
'this burgh exercises the same powers with the Provost or Lord
'Provost of those burghs where their chief magistrate is honour-
'ed with those titles. It is, however, undeniable, that the three
'persons chosen at the election complained of, had the plurality
'of votes; and it is equally undeniable that they would have
'been the bailies returned, in whatever form the leet had been
'made up, so the complainers cannot allege that they were in
'any respect disappointed in their choice; and the only irregu-
'larity committed was, that the votes were taken on a leet or
'roll made out in a different form from what I have no doubt
'had been the accustomed practice from 1719 downwards. It
'therefore only remains for your Lordships to decide the point
'of law, whether the deviation or irregularity above described
'be sufficient to set aside in toto the election complained of;
'seeing the mode of procedure then followed was precisely in
'conformity with the original set of the burgh, was the mode
'practised for twelve years after the Union, and except in so far
'as establishing a precedent, which, if allowed to be persisted
'in, might on some future occasion be prejudicial to the rights
'of the burgesses, cannot be said in any respect to have injured
'or disappointed the burgesses in the choice of the three bai-
'lies.'

On advising this report, the Court, on the 9th March 1826, refused the petition, and adhered to the interlocutor reclaimed against.*

Gardner and others then appealed.

Appellants. 1. As it is established that not only the set or constitution of a burgh may be constituted by usage alone, but that

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* See 4 Shaw and Dunlop, No. 362.

March 23, 1827. even a written set, whether constituted by the charter of erection, or by an act of the Convention of Burghs, may be controlled, modified, and altered, by a subsequent contrary usage; and as in this case the elections had from 1719 till 1819 been uniformly made in the manner alleged by them, the election which had taken place in 1823 was contrary to law. And,

2. It is not relevant to allege that the same result would have been arrived at by the illegal mode of election complained of, which would have been attained if the election had taken place according to the legal mode contended for. But in point of fact this was not the case; and even a deviation from the written set had been made.

Respondents. 1. Although it is true that a set may be modified by usage, yet, in this case, it was established that there was no such usage as that which was alleged; and,

2. As the very same persons would have been appointed had the leet been issued in the form wished for by the appellants, they had no interest to complain.

The House of Lords 'ordered and adjudged that the cause 'be remitted back to the Court of Session in Scotland, to in-'quire whether any and what usage, differing from the set of 'the burgh, has taken place, as to the form or number of the 'leets, and mode of election of the three bailies of the said 'burgh, and for what length of time such usage has prevailed; 'and whether, having regard to the nature of such usage, if any 'shall be found, upon such inquiry, to have taken place, and 'the length of time during which it shall be found to have pre-'vailed, such usage ought, according to law, to be considered 'as modifying or altering the set of the said burgh, as to the 'form or number of the leets, and the election of bailies; and, 'after such consideration and inquiry, to proceed farther upon 'this petition and complaint as is just.'

March 10, 1827.

LORD CHANCELLOR.—My Lords, there are two cases which I wish to mention now, as cases in which I propose to move the House to give judgment on the second day of next week in which causes are heard. I mean the cases with respect to elections in Scotland. There is one of them which depends very much upon the question, whether there has been any such usage for any given period of time as has altered the set of the burgh with respect to the mode of carrying on election. If it depended upon this, that the same persons appeared to be elected in the form in which the election was made, as might have been elected in that form which, if there had been an usage, would have been the prescribed

form, it does not appear to me that the consideration, that the same per- March 23, 1827.
sons had been elected, would by any means support the election; because I take the form of the election to be of the essence of the election; and, more particularly, if there are special officers who are to name individuals, out of which individuals a choice is to be made by the general electors. I take it to be a principle of our constitution, and I think the Scotch Courts follow that, that there is first to be the judgment of particular individuals recommending other individuals, and then to be a choice by the electors in general out of those individuals who are so recommended; and I cannot conceive, at least according to any English doctrine, that if nine individuals are proposed, out of whom the whole body of electors are to choose, that the mere circumstance that they happen to choose three who might be the same individuals, if, instead of there being one list of nine, there had been three lists of three, out of each of which lists the general body of electors were bound to choose one. I do not apprehend that the circumstance of the election falling upon the same individuals, if it could be demonstrated that it would have fallen upon the same individuals in either case, would do to support an English election, because, if the constitution of a burgh election is, that those individuals who are to name those respective lists of three have a duty to give a protection to the proceeding, which was to place in the situation of magistrates the individuals who were to be chosen, the mere accident, if there is one list of nine, instead of three lists of three, of the individuals being recommended in the three lists of three, by those who had a duty, according to the constitution imposed upon them, of pointing out, in the first instance, who are the individuals that they think ought to be trusted, and those out of whom the choice should be made, is not sufficient; I think the departure from that form would be considered, in our Courts, as of the essence of the proceeding, and that if that were challenged, it would not do.

It remains, however, to be examined most carefully and most industriously, whether there be any such usage or not as that which is said to have varied the set of the burgh, because, if the usage does not exist, if there has not been a consistent usage for a certain number of years, (I think the law of Scotland requires forty), if a usage has not existed which varied the set of the burgh, no question arises; and I entertain very considerable doubt upon this, whether it has or has not been too hastily taken for granted, that no further proof should be entered into before the decision was made in the Court of Scotland. Having just broken this subject, I will proceed, upon the second day of causes in the next week, to propose to your Lordships the judgment in that case.

My Lords, with respect to the other case,* if it were a question arising upon the law of England, there would be no doubt about it; for I do not apprehend that a statute which gave a summary complaint, is a statute which would take away the common law remedy. But one is extremely distressed in this case, because the case of Young *v.* Johnston, in the House of Lords, at a date pretty nearly contemporaneous with the

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* Tod *v.* Tod, p. 512.

March 23, 1827.

statute, appears, according to Mr Wight's note of it, to have decided (as it has been alleged from the Bar) that the action of reduction must be brought within two months. Now I cannot satisfy my mind on what ground it should be held that the action of reduction should be brought within two months, unless the statute related to actions of reduction as well as summary complaints, and considering the nature of the evidence, as we find it in the printed cases in the House of Lords, and that there is not a single word that would support the judgment in that evidence, still although that point does not appear to have been mentioned in the printed cases, there appears to be something hanging about that case, which makes it look very much like an authority in the House of Lords upon the point. Whether that case which has been so represented as of authority, has been well decided, or not well decided, is a matter which, I apprehend, this House could not trust itself to examine.

March 19, 1827.

LORD CHANCELLOR.—There is a case of Gardner *v.* Reekie, in which the question is, whether nine persons should be named from among the burgesses at large, out of which there were three to be chosen, or whether there should be three lists of three persons, from each of which three lists one individual should be named; I will take that case another day. But, after again thinking on that subject, I am satisfied upon two points: first, with respect to an usage which is not exactly conformable to the set of the burgh, but which is a mode of modifying the proceedings in carrying into effect what the set of the Burgh requires, it is necessary to inquire whether there is a clear usage of forty years of delivering three lists of three each, and if that fact could be established, that there was a clear distinct usage of forty years, then the circumstance, that in this case it happened that the same individuals probably would have been chosen, if there had been three lists of three, as were chosen out of the one list of nine, does not make it a clearly established and good election; for it is extremely clear, that if the three old bailies were, according to the usages of the elections, each of them to name a list of three, comprehending in each list themselves and two other persons, and that, out of the first of these lists, an individual should be chosen, which individual should be one of the magistrates in the next year; and that out of the second list another individual should be chosen, who should be another magistrate in the next year; and that out of the third list, another individual should be chosen, who should be another magistrate in the next year, the constitution of the burgh, as looked at, would authorize us, or, indeed, require us, to say that there was a duty devolving upon these old magistrates to take care to name distinct individuals, who should be the objects of choice by the burgesses at large, and their not having exercised that duty, will not permit of this answer being given, that the same individuals were chosen as if they had exercised that duty; because, in this mode, the election could not have that sanction which, under that rule, it was intended to have. I come, therefore, to this conclusion, that it is advisable, before your Lordships proceed to judgment in this case, to see whether there was before the Court of Session clear proof that such an usage was established.

March 23, 1827. March 23, 1827.

LORD CHANCELLOR.—My Lords, in the cause of Gardner *v.* Reekie, it became necessary, upon reference to the circumstances of the case, to see the agents on both sides, which I have taken an opportunity of doing.

The question in this case arises upon the election of the Magistrates and Town Council of the Burgh of Kilrenny in the year 1823. In the set of the burgh the form of election is stated; first of all the bailies, of whom there are three, give in their leet of nine persons, whereof they themselves are always three, out of which they are to choose the three bailies for the year ensuing, and the treasurer gives in a leet of three persons, whereof he himself is always one, out of which they are to elect the treasurer for the said year, which being read over in the presence of the council, and approved of by them, is read publicly in audience of the haill burgesses who are to vote. This being done, the clerk is appointed to sit in the Council-house and mark the votes, there being always one of the council appointed to see his right marking; and, accordingly, first the bailies, then the treasurer, council, and thereafter the haill qualified burgesses, one by one, give their several votes for the bailies and treasurer for the said ensuing year. And the persons chosen by plurality of votes, together with the new council, immediately convene within the Council-house and accept of their respective offices, and give their oaths de fideli administratione, the same being tendered to the three bailies by the clerk, and by them, first to the treasurer, and then to the council—which being done, they adjourn.

My Lords, in this case, a complaint was made against the election on two grounds; first, that the leet of nine given in by the bailies was not subdivided into three leets. Your Lordships will observe, that according to the original set of the burgh which I have read, the bailies are stated to give in one leet of nine persons, out of which three bailies are to be chosen for the year ensuing; but the complainants insist, that instead of a leet of nine being given in, there should be a subdivision into three leets, 'the first containing the name of the first magistrate of the former year, 'and two other names, from which alone the new first magistrate should 'be elected; the second, containing the name of the second magistrate 'of the former year, and two other names, from which alone the new se-'cond magistrate should be elected; the third, containing the name of 'the third magistrate of the former year, and two other names, from 'which alone the new third magistrate should be elected.' They alleged that there had been usage to that effect. This allegation, that there had been a usage to that effect, as to the importance of it, depends upon this, whether, admitting, that the set of the burgh in 1710 was of a certain nature, there has been an usage—an uniform usage—such an usage as would amount to a regulation of the mode of election, from and after the time that that usage took effect, by continuance, which would, in the respect I have mentioned, admit of being considered as having become a valid modification of the set of the burgh, or a valid alteration of the set of the burgh.

There was another ground taken, which I do not think it necessary to

March 23, 1827. trouble your Lordships upon, namely, that the oath against bribery and corruption had not been properly administered. I do not think that has been successfully contended, nor do I think it can be successfully contended at the Bar, that the case proves anything like what would be enough, if anything could be enough, to set aside the election, and therefore I need not trouble your Lordships any farther upon that part of the case.

My Lords, all that we have heard from the Bar, with respect to the opinion of the learned Judges who decided this matter in Scotland, before whom it was brought by petition, is, that they were of opinion, that as there had been an election which produced the same result by one leet of nine persons as would have been the result if there had been three leets of three given in, according to this modified set of the burgh, it was not subject to objection. Now, my Lords, attending to what is necessary to be done in this case, I cannot think it would be right to go, as stated in this judgment, upon a representation of that kind. If I were, I should certainly feel strongly disposed to say and think I am right in that, unless my mind is influenced by English principles, more than it ought to be, with respect to a Scotch case, that, according to my notion of the matter, the identity of the result, if the form of election has not been right, would not make the form of the election, or the election good, because I take the form of the election in these corporate bodies to be of the substance and essence of what they are to do; and indeed I think it would be very easy to demonstrate, that if the result upon which the choice is made of three persons out of one leet might be exactly the same as the result when the choice is made of three persons out of three leets; upon reasoning, as applied to corporate acts, it might be clearly shown that that might be very often not the case where the proceeding was in truth upon one leet of nine, instead of being a proceeding by three leets of three in the one case, three individuals recommending each a separate leet, and in the other case, three individuals recommending one leet, and not three separate leets. I think it might be so clearly shown, that in many cases the result would not be the same, that at least, according to our laws of election, and the way in which we should treat the subject here, it would be impossible to say that the identity of the result would render such an election good.

But, my Lords, in order to see whether you can get at that question, you must look at another question, and you must look at the effect of the evidence in the cause; and with respect to that other question, and the effect of the evidence in the cause, I cannot collect either from what is in these papers, or from what has been stated at the Bar, that we have had the opinion of the Court of Session upon the point I am now alluding to. If I must give an opinion, I should say, without having been better assisted upon that point, that if there was clear uniform usage for forty years together, which forms a kind of prescription in the law of Scotland, according to which uniform usage, they have proceeded by three leets, composed by three bailies, instead of proceeding in the old mode of one leet, according to the set of the burgh in 1710, that that uniform usage made

out distinctly in point of evidence, and shown by evidence to have existed, might, according to the law of Scotland, either be considered as such a modification of the set of the burgh, or such an alteration of the set of the burgh, as that it ought to be proceeded upon as the true construction of the set of 1710, or such an alteration as might be available according to the law of Scotland; but, notwithstanding I have said thus much on the result, it is not my intention to prejudice either of the questions of law, upon which I have taken the liberty to say a word or two. March 23, 1827.

My Lords, if I understand the course which the case took in the Court of Session in Scotland, it does not appear to me that the Court went so far as to inquire whether there had been such an usage, or to give any judicial opinion upon the question of what would, or what would not be, according to the law of Scotland, the effect of such an usage, the Court of Session being of opinion that, the result being the same, therefore it was unnecessary to inquire any farther. I am afraid, that, according to our laws we cannot go on in such a state of the cause, and that it is necessary to do that, which, for various reasons, I have a great objection to doing, I mean to remit this cause back again to the Court of Session, with a direction that they should inquire, whether there is in this case sufficient proof, or whether, according to their practice, sufficient proof can be given upon a farther inquiry, by referring it to a jury, or in whatever other way, that for the period I have mentioned there has been a clear uniform usage to substitute three leets instead of one leet; and that they should inquire, what, according to the Scotch law, is the effect of that usage, either in modifying or in altering the set of the burgh. If the proof that is given is not sufficient to make out that there has been such a consistent and uniform usage, for such a given period (if any given period be sufficient) as would amount to a valid modification of the set of the burgh, or an alteration of the set of the burgh; then, to be sure, if the question is to be decided upon the want of evidence of that usage, that would make it unnecessary to determine the point of law that would arise, if there were distinct evidence of such an uniform usage. On the other hand, we are not informed here whether if it should turn upon the question of insufficient evidence, it would be the bounden duty of the Court, according to their practice, to inquire farther into the fact of the usage, or the means which they would adopt, in order to give themselves the benefit of such further inquiry.

Upon these grounds, therefore, after looking at this case repeatedly, and looking at it with that want of inclination ever to remit to the Court of Session in Scotland, which I have been taught by many lectures addressed to me upon the subject to entertain, it does appear to me, that notwithstanding all, it is quite impossible in this case to do otherwise than to make such a remit. The form of that remit must be drawn out, and it seems to me it is the only way in which we can dispose of this case.

Appellants' Authorities.—Wight, 333. 4.—Gillon, Sup. 134. 6.—Bell, 481.—1 Ersk. 1. 45.—Edin. Election Case, 27 Jan. 1821. (6.)

RICHARDSON and CONNEL—SPOTTISWOODE and ROBERTSON, *Solicitors.*