

before us, could not give or found any judgment upon it. I desired to know the opinion of the Court what the law as to this act would be, suppose the defenders sincere in that process, yea suppose it well founded,—and in general in every case where a new election is come on before the controversies anent the former election are finally decided either here or in the last resort,—even although the Magistrates out of possession had a decree of this Court for them stopped by an appeal,—for as there was no exception of that case in the act, if they were within the purview of it, however the Court might sustain such a favourable plea as a defence against the penalties, yet it could never legitimate the separate election made by them if the act declared it null. If, on the other hand, a separate election in such a case was not within the purview of the statute, then no case could fall under it where the former election was still *sub judice*. I received no answer till Arniston spoke, and that very fully, that for the above reason this was not within the statute; and as nothing is mentioned in the statute of depending controversies of elections, and I thought the Legislature could never mean, when the Magistrates duly elected were kept out of possession for a year, to void their election for ever, because they were not able to obtain redress before next election, therefore I thought, that according to my first notion of it, the act “by separating from,” &c. meant the same with “seceding;” whereas the President’s opinion was, that in the case stated, the Magistrates out of possession, though the right of election was truly with them, and it should be afterwards so found, could not make a new election without contravening this act. But upon the question, it carried that the defenders were not within the terms of this act.

No. 14. 1741, Jan. 27. ELECTION OF HADDINGTON.

I WAS in the country, confined by the storm, when the first interlocutor was given, and therefore did not mark it, but it is full in the reclaiming bill which I keep. The Lords adhered to the former interlocutor, sustaining the objection that the execution was not signed by the witnesses, and found it not *now* suppliable. The word *now* was added by Arniston, because he thought in the general it was suppliable. But as the amended execution was not produced within the year of the defender’s magistracy, as to which I thought it not suppliable in the general at any time after it was produced in judgment, I thought the producing it after the year did not alter the case, if it were suppliable. They adhered as to the other two points; that the execution did not bear with whom the copy within the house was left, and 3dly, that Brindles, one of the Councillors, was not called. They waved determining the point in the other petition, that the process was not insisted on within the year; only Arniston declared his opinion that it was a no-process; and they found the pursuers liable in expenses.

No. 15. 1741, Feb. 6. ELECTION OF BRECHIN.

THE Lords found, 1st, that no new execution could be received. They repelled the other no-processes that the defenders were not designed, and that the execution bore *at* the dwelling houses, and not *in*, though it was delivered to the servants. But they sustained the objection, that the execution did not specify where the dwelling houses were. But they found that it can be amended, contrary to a decision I marked 23d July 1734.

In this last Arniston did not vote, but did vote in the rest on the side of the majority.—(N. B. Dun did not vote in any of the points.) They superseded another objection, that the persons who got the copies were not servants to the parties, till the messenger amend his execution.—6th February Adhered, and found the Deacon, not being a member of Council, need not be called.—(21st January.)

No. 16. 1741, Feb. 11. ELECTION of the TOWN of PERTH.

THE Lords having formerly found that Provost Craw, and his adherents, might as Councillors for the preceding year, carry on the reduction of Provost Ferguson's election, they this day found that the separation at this election was not in terms of the act 7th Geo. II. and before answer, allowed a proof of the unlawful combination. Arniston thought both elections null at common law, Fergusons because of the separation, and Provost Craw's for his refusing to put the questions mentioned in the minutes, though he thought the several members not bound to answer the queries there mentioned. I humbly differed,—I thought the Provost lawfully refused to put the question, when the decision, as was admitted, could not bind any of the Councillors; but as the eleven Merchant Councillors had plainly the right of election if no objection lay against them, therefore, that as the secession of the 15th Councillors was unlawful, so likewise their election was null, as it must have been had they staid. On the other hand, if such objection lay against the 11 as made them incapable, then the right of election was with the 3 Merchants and 12 Trades Councillors, and had they staid still, the election made by them must have been preferred; and if they, being in the knowledge of the unlawful combination, did therefore separate, I thought it would be too strong an effect given to that separation to void their election; and it was upon my saying so, the act was pronounced before answer; and they found, that the defenders might be adduced as witnesses against one another, but could not be examined on his own entering into the combination, without referring *simpliciter* to oath. 11th February Sustain the reason of reduction of Provost Ferguson's election, and those of his side, and reduce the election unanimously. 12th February Repelled the reasons of reduction of Provost Craw's election. *Pro* were President, Justice-Clerk, Minto, Strichen, and I. *Con.* were Drummore, Arniston, Dun, Balmerino, and Murkle. But Monzie did not vote in any of the questions, because of his relation to Provost Ferguson. This judgment, upon an appeal, was affirmed without a division.—(13th January.)

No. 17. 1741, Feb. 17. ELECTION of LOCHMABEN.

THE Lords found the act 7th Geo. II. extends to the conclusion of declarator, as well as of reduction of elections of Burghs. 2dly, That raising a summons within the eight weeks, without executing against the whole parties is not enough,—and refused the bill for Sir Robert Laurie, Lord Advocate, &c. without answers.—N. B. I was in the Outer-House.

No. 18. 1742, Nov. 30. TACKSMEN of EDIN. IMPOST *against* GILCHRIST.

UNANIMOUSLY find whatever is imported for sale is liable to the impost, to whomsoever it be sold.