

the hearing in presence we thought that ten Councillors could not carry on an election; but we thought that those who wilfully absented have no title to complain, and therefore ordered the complainers to condescend if there were any of the complainers who were casually absent;—and on the condescence we found four of them were not barred, and therefore, *2do*, we reduced the election. In the first I did not vote. The second carried five and the President to four. I was very unwillingly on the side of the majority. Murkle did not vote. This was January 15th; and on a reclaiming bill, June 3, we adhered to the first, and found that these four constituent members of the Council, though not present at the election, might on the statute summarily complain; but found, that 10 though a minority of the Council might make an election, and repelled that reason of reduction by the scrimpest majority. *Renit. inter alios* President *et me.* *Vide* 2d July 1747.

We altered the interlocutor of 3d June, and reduced the election made by the ten. *Renit.* Arniston, Drummore, Dun, Monzie, and Shewalton. For the interlocutor were, Minto, Strichen, Haining, Murkle, Tinwald, *et ego*, beside the President. Kilkerran was in the Outer-House, and Leven did not vote.—2d July.

No. 24. 1747, June 11. ELECTION of WICK.

ANDERSON, &c. having by summary complaint quarrelled the election at Michaelmas 1745, they raised reduction of the election 1746, as made by the Magistrates chosen in 1745. Against this last sundry objections were made, particularly that the whole Burgesses should have been called, because, by the set, the election is made by them out of a leet made by the Magistrates of the preceding year; but we repelled it, since by calling the Magistrates and Council the Burgh itself was called. But we sustained other two objections, viz. that the executions did not express the names of the whole defenders in terms of the act 6th 1672, which was material here, because if any one was not called he could not insist against the rest; 2dly, That after it was executed against one of them, the summons was altered and cut; and in respect of this judgment in the reduction of the election 1746, we found no use for deciding in the complaint of the election 1745, because it could now have no effect, since the election 1746 was now by the acts 7th and 16th Geo. II. become unquarrellable. (11th February.)—But upon reclaiming bill and answers we thought that the reduction did not fall under either of these acts, and might yet be brought, though the two months are elapsed; and that therefore the complainers might yet insist in their complaint of the election 1745. (28th February.)—The same day we gave the like judgment as to the complaint of the election of St Andrews in 1745, and found that we must yet decide on it, though there has yet been no complaint or reduction of the election 1746.

When the Lords proceeded to advise the complaint itself I was in the Outer-House, and at my return heard the President giving his opinion that the faculty or privilege given the Earl of Caithness, would not go to singular successors, and that it was still in the family of Caithness; but as there was here no declarator, and Ulbster and his authors had been long in possession, therefore they repelled that objection, and for the same reason of long usage repelled the objection, of the Provost and

one of the Bailies not being findwellers in the Burgh, and assolzied from the complaint.—(11th June.)

No. 25. 1747, June 30. MAGISTRATES OF KIRKWALL *against* INHABITANTS OF STROMNESS.

THE Magistrates pursue the defenders as unfree traders, upon the 84th act 1503, 154th act 1592, 5th act 1672, to pay the value of all goods imported or exported, bought or sold for some years backward;—but we found that no such action does lie for the value of these goods, but only for confiscating the goods themselves; and refused a bill reclaiming against Minto's interlocutor without answers. Only Arniston, Strichen, and Monzie were for seeing.

No. 26. 1747, July 3. *ELECTION OF RUTHERGLEN.

By the set of this Burgh the inhabitants Burgesses chose by a poll eight persons, out of whom the Magistrates chose three to be Councillors, and the several Crafts chose each six persons, of which six the Magistrates chose three to be Councillors this last year. A bill of suspension was presented of the votes of 15 Burgesses because they were coaliers, and from an Ordinary in time of vacance (through inadvertence) obtained a sist. At the poll the sist was presented; however their votes as well as of all the other inhabitants were marked; but the Provost who presided at the poll, that he might neither contemn our authority, nor do injustice to the coaliers Burgesses, would not report the leets chosen by either party, and therefore he and the two Bailies chose other four Councillors *tanquam jure devoluto*. Upon complaint of this election, we all were displeas'd with the sist, as was also the Ordinary who gave it, and the President was for sustaining the election on that account. But the majority thought that that could not give a right to him and the two Bailies to choose whom they would; and therefore on the question, the election was reduced, and on a suggestion, that because of that sist several who had a right did not vote, we ordered a new poll. Then the question was as to the objection to the coaliers. I thought that as by our law they had not the free disposal of their persons, to give them votes was inconsistent with the freedom of election;—but it carried to repel the objection. It was also complain'd, that the leet of six of the weaver trade was carried by admitting two minors to vote, and we sustained the objection, reduced the election made of three of that leet, and ordered three to be chosen out of the other leet; for we thought that though a minor might be a Freeman of an Incorporation, yet he could have no vote in their affairs. In the same complaint one Hall a notary, having in a blank that was in the bill of suspension, filled up three coalier Burgesses besides the 15 that were in it when the sist was granted, we deprived him of his office, fined him 40 shillings sterling to the poor, and in the expenses of the complaint against him, for which we gave a summary warrant. And 20th Adhered as to Hall.—and 20th February We Adhered to the other interlocutor.—(15th January.)

A COMPLAINT being offer'd us, the beginning of this Session,—a complaint of the Magistrates for not duly executing the order of this Court, mentioned 15th January, in the new poll for four Councillors, which we then ordered to be served on the parties, and