

to be laid out of the question. It has been alleged that the three cases of Innerkeithing, Edinburgh, and Brechin, turned upon the set.

24th January 1775, the Lords pronounced this interlocutor:—"Dismiss the complaint, assoilye the defenders, and decern; find the complainers liable in full costs of suit," &c.

It had weight in obtaining this judgment, that the Lords thought the instances condescended on were sufficient at least to constitute the respondents *in bona fide* to continue the same practice, until such time as it should be found, in a declaratory action, that residence was a necessary qualification of the councillors of a borough. But they refused to insert such reservation in the interlocutor, or to make it a special interlocutor; but kept it in general.

April 1775, on an appeal, the decree was affirmed.

NORTH-BERWICK.

On this last point the Lords had given the same opinion in the case of North Berwick.

The papers in the Linlithgow case were well drawn—and explain 1st, The general constitution of our royal burghs. 2dly, The power of the convention to alter or amend their sets. 3dly, The meaning of a set of a burgh,—of the word alderman,—and several other particulars.

1774.

ELECTION OF PITTENWEEM.

A complaint, in common form, founded on the Act the 16th of the late King, was given in to the Court, on the 12th November 1765, complaining of an election of the Magistrates and Council of Pittenween at the Michaelmas preceding, as brought about by bribery and corruption. A reduction of it was also raised and executed. The respondents, as to the complaint, objected that the complaint was not lodged in due time, that is, within two calendar months after the election; and so could not be received. But the Lords (14th December 1765,) found the complaint competent; and in an appeal, 7th February 1766, the interlocutor was affirmed. Afterwards, a proof having been allowed *in causa*, the Lords, upon advising thereof, (28th January 1767,) "found the complaint competent and relevant, and that the election of Magistrates and Councillors of Pittenweem, made by the respondents on the 10th September 1765, was brought about by means of bribery and corruption, and therefore found the same void and null; reduce, decern, and declare accordingly; found the persons complained upon conjunctly and severally liable in full costs of suit," &c. And, on an appeal, 2d March 1767, this decret was affirmed.

The respondents to this complaint, who were also defenders in the reduction, by an Act of Council, agreed to defray the expense of these processes out of the common good of the burgh; and, having employed John Borthwick as their conductor in them, granted him the Town's bond for L.477, the sum laid out by him in defending them. And Borthwick conveyed this bond to

Robert Alexander, merchant in Edinburgh, who had truly advanced the money, who was at the same time candidate for the district of which Pittenweem was one of the burghs, and by whose influence it was that these gentlemen had got into Council.

But an opposite interest now prevailing after a poll election in the burgh, the present Magistrates brought a reduction of the bond against Mr Borthwick and Mr Alexander, at least so far as related to the burgh. The Lords, (1774,) "found the community not subjected in payment of the bond libelled, and reduced the same so far as related to the community; reserving all action to Mr Alexander against the granters in their private capacity; and, to them, all defences as accords: found expenses due."

For it occurred to the Lords, that, although the Magistrates in possession of their offices may carry on law-suits, in name and for behoof of the community, and load the community with the expense of these processes, whether successful or not; yet, to allow a corrupt set of Magistrates, who may have got into their places by most unlawful means of bribery, corruption, fraud, falsehood, &c. to maintain themselves in their places, at the expense and with the money of the burgh, would be most unjust, and evidently tend to the ruin of every burgh where the case occurred. It seems to be a general rule, that, in the expense of all processes of this nature, in competing who should be in and who should be out, the common good of the burgh in many matters should not be affected.

1776. *March 9.* TURNBULL, &c. WEAVERS OF RUTHERGLEN *against* CROOKS.

WHERE a seal of cause, or letters of deaconry, in a royal burgh, has been granted by Magistrates to a particular corporation, it has been contended that the same cannot be altered by the incorporation without consent of the Magistrates; so found by Lord Covington, (9th March 1776,) in a dispute among the weavers of Rutherglen, Turnbull, &c. against Crooks, &c. The argument in the papers was pushed a degree farther, and it was held, that, if the seal of cause, or letter of deaconry, was recorded in the minutes of the convention of burghs, it could not be altered without their consent.

The fact, however, was, that the seal of cause in question was not recorded in the books of convention; neither is such recording usual; therefore the Lords, on advising a reclaiming bill and answers, went no farther than to find that a letter of deaconry granted by Magistrates could not be altered by the corporation itself, without their consent. And in this they seemed unanimous.