

No 53. proper to be made there to the party, is to argue from words and sound, without adverting to the purpose and intention of the thing.

*Kilkerran, (INHIBITION.) No 12. p. 299.*

1785. February 23.

No 54. ALEXANDER TENANT and Others, *against* ALEXANDER JOHNSTON and Others..

In a complaint upon the election statutes against a person out of the kingdom, the person complained on may be cited edictally without a special warrant of the Court of Session for that effect.

ALEXANDER TENANT, and others, complained to the Court of Session, in terms of the statutes 16th Geo. II. and 14th Geo. III. of certain proceedings in the election of magistrates for the burgh of Anstruther-Easter.

One of the parties interested in this complaint, having his residence in England, the messenger employed by the complainers executed it against him at the market-cross of Edinburgh, and pier and shore of Leith.

By way of preliminary defence, therefore, the respondents

*Pleaded* ; Judicial citation is performed either by personal intimation to the party, or by leaving a copy of the summons, or other libel, at his dwelling-house. When neither of these methods, on account of the situation of the defender, can be practised, a warrant must be obtained from the Court of Session, who, in virtue of their prætorian jurisdiction, authorise a special form of summons, adapted to the circumstances of the case. As the messenger, in this instance, was not so warranted to depart from the general practice, the present complaint must fall to the ground, because the whole parties interested in its discussion have not been regularly brought into the field.

*Answered* for the complainers ; The remedy of abuses committed at elections has no affinity to that instituted at common law for the redress of wrongs of a pecuniary nature. The matters complained of, the extent of the redress, the period within which the complaint is to be entered, with the form in which it is to be presented and discussed, as regulated by the several statutes made in that behalf, are essentially different. In all those enactments, however, the form of executing complaints is no where ascertained. The person to whom this business is entrusted, is thus left to his own discretion, which could not be here more properly exercised, than in adopting that proceeding, which, in the practice of the common law, would have been proper in the same circumstances.

*Observed* on the Bench ; The preferring of the complaint being alone sufficient for interrupting the statutory prescription of four months, the respondents could derive no other advantage from the sustaining of this objection, than to put the complainers to the trouble of a new citation. But the execution already used seems abundantly formal.

‘ THE LORDS repelled the objection.’

For the Complainers, *Crosbie.*

*Alt. Wight, J. Anstruther jun.*

*Ecl. Dic. v. 3. p. 188. Fac. Col. No 202. p. 317.*