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 3*dly*, 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, 1*st*, 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.