

No. 19. 1743, Nov. 24. ELECTION OF FORFAR.—BINNING *against* BINNING.

AN election of Forfar in 1741 was quarrelled, and in June 1742 the Court found a no-process, and an appeal was served, but not yet discussed. Both sides continued to make new separate elections in 1742 and 1743, but Alexander Binning continued in possession. James Binning gives in a summons complaining on the act of Parliament of the election 1743; but we find it not founded on the statute, and therefore not competent.

No. 20. 1744, Feb. 29. TOWN OF BANFF *against* CAMPBELL.

THE Lords adhered to Kilkerran's interlocutor, finding the Burgh of Banff and the present Magistrates not liable for the malversations of former Magistrates in their offices.

No. 21. 1744, July 31. OGILVIE *against* ———.

THIS building consisted of five storeys to the High Street above the causeway; but as they were obliged to have the chimney in the fore-wall, instead of carrying up a small dead stalk above the side-wall to the height and above the roof, they carried up three little gables, in which they placed garret windows on each side of the chimneys, which made an appearance of a sixth storey, but was all within the roof, and no other garret storeys; and as the declivity down the Old Provost's Close was very quick, the houses there below the roof and above the Close were seven storeys, and each storey made but one house with the fore-part of this. A bill of suspension was presented to me, which I reported, and the Lords refused the bill both as to fore-part and back-part.

## No. 22. 1745, July 31. ELECTION OF INVERKEITHING.

MR JOHN CUNNINGHAM and others raised a reduction of an election of Sir Robert Henderson and others, as Magistrates of Inverkeithing, and a declarator of their own election, wherein we found last Session, that the old Deacons had right to be in Council at least till the admission of the new Deacons, and therefore allowed a proof of their being by force kept out;—and the proof of that, and of other particulars complained of, being reported, three days of this week were spent in hearing. The keeping down the old Deacons by force was clearly proved, and indeed the defenders had procured a warrant of two Justices of Peace, and the aid of Constables to do so;—but the question was as to the effect of that force? Some thought (*inter quos ego*) that that depended on the power or right these old Deacons had to act in the election; that if they had an elective voice, then that would be sufficient to annul the defenders' whole election, because in fact these old Deacons gave the pursuers the majority; but though that had been doubtful, the force used upon four electors, might bring a *justus metus* on some of the rest; but if all their right was to concur with the rest of the Council in judging the controverted elections of some of the new Deacons chosen in their place, then that force could not influence the election, because we behoved to judge whether *bene* or *male judicatum* as to these new Deacons; and our judgment must be the same in that question; whether the