

1764.

NICOLSON *against* MILLAR, Glazier.

MILLAR, a burghess of Edinburgh, and freeman glazier, member of Mary's Chapel, had his residence at the head of the Canongate, without the limits of the Royalty. He had, for a course of years, practised his trade in Edinburgh, paid the entries, quarterly dues, &c. as any other member of the incorporation, entered his apprentices, voted in all elections, and been in the long leet for deacon. He was elected deacon, *anno* 1763; and being objected to on account of non-residence, the Magistrates, judges in the first instance, and afterwards the Lords, sustained the objection, and preferred his competitor Nicolson, though elected by a confessed minority. It is to be observed, that, at the time of election, Millar was not only a resident in Canongate, but deacon of a corporation there, kirk-treasurer, stent-master, and constable.

A like case was given 1774, in the case of Brechin. In this case the Lords disallowed of the votes of all those who were not residents within the burgh, though several of them resided close by it, in a village a few yards only from it, without the royalty, but had been in use to practise within the burgh without challenge.

 LINLITHGOW.

1775. *April* . ANDREW CLARK and Other MEMBERS of the COUNCIL of LINLITHGOW *against* GILLIES, &c.

At the election of Magistrates and Councillors for the burgh of Linlithgow, at Michaelmas 1775, three persons were elected councillors, non-residents in the burgh. A complaint being given in; pleaded, in defence, *1mo*, That, neither by the set of this burgh nor by the law of the land, is residence a necessary qualification in the common councillors of a burgh. See case of *Forres*, 7th January 1757. *2do*, Various instances were condescended on, where, in this burgh, non-residents had been elected councillors without opposition; and, *3tio*, The complainers, having themselves concurred in the election of these gentlemen at Michaelmas 1774, could not now complain, and were barred *personali objectione*; for the election had been unanimous. In this cause, therefore, it became the subject of debate whether actual residence was not an implied essential qualification in a councillor. For, to the *second* defence, the fact was denied, at least the instances were so few as not to authorise such a deviation from the legal constitution of the burgh. And, as to the *third* defence, one of the complainers was absent: so at no rate could the personal objection apply to him.

As to the point of non-residence of councillors. If it is to be considered how far it is requisite by the common law of Scotland, the set of the burgh is

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