

1777. *August 1.* JAMES BELL *against* The MAGISTRATES of INVERKEITHING.

SUMMARY APPLICATION.

Whether a Summary Complaint be competent against the proceedings of a Town Council in their election of Councillors?

[*Fac. Coll. VII. 407; Dict., App. No. I; Summary Application, No. 2.*]

JUSTICE-CLERK. I doubt of the incompetency as found by the interlocutor: the words of the statute seem to be clear, and it would be of dangerous precedent to find otherwise: Magistrates then might allow proofs, and by that means go on to an election without any deacons who might be adverse to their views.

COVINGTON. I do not understand that the election of deacons, or such other matters, falls within the intention of the statute. Complaints must be served on Magistrates and Council, which implies that the complaints respect their actings.

BRAXFIELD. The question might have been tried both ways: the Magistrates have not received the deacon; *that* was wrong done at the election, or at a meeting previous to the election.

On the 1st August 1777, "The Lords found that the complaint was competent;" altering their interlocutor of the 14th June 1777, but on the merits "dismissed the complaint, and found expenses due."

*Act. R. Blair. Alt. Ilay Campbell.*

1777. *August 5.* KATHERINE KEIR, &c. *against* GEORGE WARDEN.

BANKRUPT.

Construction of the second branch of the Act 1696, c. 5.

[*Supplement, V. 386.*]

COVINGTON. The heritable bond has no connexion with cautionary obligation: it is altogether a *novum debitum*: it ought to be reduced,—the only consequences will be to bring in the parties *pari passu*.

BRAXFIELD. *Ex facie*, the bond does not fall under the enactment of the statute 1696. The transaction might have been so executed as to have given an absolute security to the creditor for the greater part of the debt. There has been great inaccuracy here, but I doubt whether there is enough to cut down the obligation. It was understood for many years, and even until 1734, that