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it will in that event be impossible that they can renew, either within two kalendar months, or at any other period, their complaint against the then nomination; for the statutes confer not that power; and thus, according to the doctrine of the respondents, whilst the former complaint could no longer be prosecuted, the new election would become unchallengeable. But surely a plea so fraught with inconsistency, and which represents those statutes as calculated only to defeat their own purpose, must at once be rejected; while, on the other hand, it is equally clear, that a suit conformable to the statutable requisites, ought not to be stopped in its progress to a legal determination. If it shall then appear that the election complained of was void, does it not unavoidably follow, that persons invested, by that ineffectual nomination, with the insignia of office merely, cannot of themselves become the legal electors on the ensuing occasion; and by consequence, that in a proper or legal sense there could not then be any election at all? Nor is it to be imagined, that the formal mode of complaint authorised by the statutes would be needful for overturning proceedings of so little significancy.

The Court were clearly of opinion, that the prosecution of the complaint might be attended with full effect, and ought to be allowed. For, it was observed, that if the grounds of challenge were established, and by consequence the prior election set aside, the subsequent nomination, without the necessity of a new complaint, must, agreeably to the maxim, *resoluto jure dantis, jus accipientis resolvitur*, of course fall to the ground; and that besides, *pendente lite nihil innovandum*; so that any change of circumstances produced by the respondents, posterior to the complaint, ought not to bar that legal method of redress: Rules of law, these, it was added, which, to preserve their efficacy, require not the aid of any saving clause of a statute.

The Lords, therefore, 'repelled the objection, and allowed to the parties a conjunct probation.'

Act. *Blair, R. Dundas.* Alt. *Wight, Ilay Campbell.* Clerk, *Colquhoun.*
Stewart. *Fol. Dic. v.* 3. *p.* 100. *Fac. Col. No* 75. *p.* 115.

1785. *February* 23.
Alexander Tenant and William Gray, *against* Alexander Johnston, and Others.

No 29.
Non-residence was considered to be an essential objection to the election of a person to serve in any office within burgh, unless where a contrary

In the burgh of Anstruther Easter, the three bailies, who are the chief magistrates, present to the burgesses annually a list of nine persons, out of which number are chosen the bailies for the ensuing year; and these, in their turn, elect the other office-bearers of the burgh.

In a complaint exhibited in the Court of Session, Alexander Tenant and William Gray *contended*, That one of the persons put in this list, in the year 1784, being resident in England, the whole election was void and ineffectual.

For the complainers it was

No 29.
rule, in regard to any particular office, had been established by usage. Reversed *ex parte* on appeal.

Pleaded: As it is necessary that the persons elected into the office of bailie shall be resident in the burgh, this is no less essential to the nomination of such as are put in the list out of which that magistrate is to be chosen, the right of the electors being equally infringed, by presenting persons altogether unqualified, as by abridging the number of those from among whom the choice is to be made. Indeed, by multiplying that abuse, so as only to leave three of the presentees eligible, the persons already in office, who may be included in the list, might ensure to themselves for ever the government of the burgh. In this manner the election of the bailies being vacated, the nomination of the office-bearers chosen by them becomes, consequently, ineffectual.

Answered: It would not follow, because the bailies must reside within the burgh, that those persons are altogether ineligible, who are not resident at the moment of their election; nothing being farther requisite to validate their appointment, than that they should, during their office, have their abode in the town. If, therefore, the exception here urged could not have prevented the election of non-residents, it assuredly cannot have the least influence on the choice of those who were preferred to them, and to whom the objection is not applicable. In fact, however, this circumstance is not rigidly attended to, either in this or in almost any other burgh in Scotland.

THE LORDS considered residence as an indispensable qualification, if not departed from by inveterate usage; and they reduced the election *in toto*.

Act. *Crosbie.* Alt. *Wight, J. Anstruther junior.* Clerk, *Menzies.*

Craigie. *Fol. Dic. v.* 3. *p.* 101. *Fac. Col. No* 203. *p.* 318.

*** This judgment reversed *ex parte* in the House of Lords, 28th April 1785.

1789. *July* 29. JOHN LAMB *against* ROBERT HIGH.

No 30.
Found, that non-resident freemen have no right to vote in the election of a deacon.

JOHN LAMB, in terms of the statutes, 16th Geo. II. and 14th Geo. III. complained to the Court of Session, that at the annual election of magistrates in the town of Kinghorn, in 1788, Robert High had been admitted as deacon of the tailors, whereas he himself had the only right to that office.

The circumstance on which he rested his argument was, that the magistrates had unduly rejected, on account of non-residence within the burgh, two persons as voters, whose votes would have been decisive in his favour.

Pleaded: After a franchise has been once constituted in favour of any class of men, nothing can debar the exercise of it, but either express statute, or immemorial custom. Neither of these however can be stated, in order to exclude non-residing burgesses or freemen from their right of voting in the election of the town's officers, any more than it could prevent them from resuming their several occupations within the town, as soon as they found it convenient. Accordingly, although it has been specially provided, that the magistrates should be