

1741.

FERGU-
SON, &c.
v.
CRIE, &c.

WILLIAM FERGUSON, *et alii*, - - - *Appellants* ;
JAMES CRIE, *et alii*, - - - - - *Respondents*.

7th April, 1741.

BURGH ROYAL.—ACT 7. GEO. II. c. 16.—An election of Magistrates set aside at common law on account of an unlawful separation of the members by whom they were chosen, although not falling under the above act.

[*Elchies voce* Burgh Royal, No. 16.]

No. 62.

By the constitution of the city of Perth, the Town Council consists of twenty-six members; of whom fourteen are merchant counsellors, and the other twelve are trades counsellors; out of this number the provost and magistrates are annually elected.

The first step in the election is, that the old merchant counsellors proceed to the election of the merchant counsellors for the ensuing year, and the next is the election of two new trades counsellors, which is made by the whole town council, from leets presented by the trades. Thereafter, the new council of merchants and tradesmen elect the provost and other magistrates of the year. At the meeting for the annual election in 1740, the trades counsellors, with three of the merchant counsellors, insisted upon certain queries being put to the other eleven merchant counsellors, upon oath, before proceeding to the election; and the

provost having declined to do this, they entered a protest, that none of the eleven counsellors, who had refused to make answer as to the queries, should be admitted to vote; and after taking another protest, they withdrew from the meeting.

Upon this, the eleven remaining old merchant counsellors proceeded, in the first place, to the election of the new merchant council; they then chose the new trades counsellors, and the whole afterwards proceeded to the election of the magistracy in the usual way. On the other hand, the three remaining merchant counsellors, and the twelve trades counsellors, having met together, proceeded to make a separate election.

Mutual actions of reduction and declarator were brought. The three merchant counsellors and the trades counsellors, with the new members chosen by them (the appellants,) insisting that the other party had separated from them, and therefore that their election fell under the act of the 7th Geo. II. and also that they had disqualified themselves from voting at the election, by entering into unlawful combinations; to prove which was the object of the questions which had been proposed, but which the provost had declined to put.

On the other hand, the merchant counsellors, with their new members, maintained, that the separation of the appellants fell under the above act, "for the better regulating of elections," &c. and annulled their proceedings, and was also unlawful at common law.

The case being taken to report on informations, the Court found, (15th June, 1740,) "That the separation in this case of the three merchant counsellors and the trades counsellors, does not fall

1741.

 FERGU-
SON, &c.
v.
CRIE.

1741.

FERGU-
SON, &c.v.
CRIE, &c.

“ under the act of the 7th of his present Majes-
“ ty.”*

A conjunct probation was then allowed, (and particularly as to the alleged combination,) upon advising which, the Court (12th Feb. 1741,) “ Found the reasons of reduction of the election of “ Provost Ferguson and his adherents, relevant and “ proven, and therefore reduced the said election “ of William Ferguson and his adherents, and de- “ cerned ; and further, repelled the reasons of “ reduction of the election of Provost James Crie “ and his adherents, and assoilzied.”

Entered Feb.
19, 1741.

The appeal was brought from this interlocutor of the 12th Feb. 1741.

Pleaded for the Appellants :—The election of the respondents was made by a minority, who had separated themselves from the majority, and therefore falls within the act referred to, which must apply to a separation of measures, as well as of place ; whereas the appellants were chosen by a majority of the whole town counsellors, consisting both of merchant and trades counsellors, which is necessary to constitute a quorum, and which did not take place in the election of the respondents, there not being one trades counsellor present at their proceedings.†

Pleaded for the Respondents :—The election of the respondents was agreeable to the constitution of the burgh ; and according to the usual manner

* “ Which statutes only in the case of a minority separating from a majority.”—*Elchies*.

† The charge of unlawful combination was renewed ; but as no notice is taken of it in the judgment of the House of Lords, and the election of the respondent is sustained, it is unnecessary to notice it further.

in all preceding elections. The council was legally summoned and constituted in due and proper form. The new merchant council were elected by a large majority of those who had the only right to vote, viz. the eleven of the old merchant council, and, of course, they had a right to vote in all the subsequent steps which took place.

If the three merchant counsellors had remained, they would have formed the minority in the election, which would notwithstanding have been valid, and their withdrawing have the effect of invalidating the election.

On the contrary, their conduct was illegal, as they separated from the town council, who were lawfully assembled to proceed to the election, so that their election is good for nothing; and it is also null, because at the election of the merchant counsellors, which is the foundation of the whole, there was not a quorum of the electors, there being only three out of fourteen electors.

After hearing counsel, “ it is ordered and ad- Judgment,
 “ judged, &c. that the interlocutors complained of April 7, 1741.
 “ be affirmed.”

For Appellants, *W. Murray, Al. Forrester.*

For Respondents, *Will. Hamilton, C. Erskine.*

1741.

FERGU-
 SON, &c.
 v.
 CRIE, &c.