1803. *December* 24. MACNAB, and Others, *against* MARTIN and Others.

No. 2.
One point in a cause being under appeal, it is incompetent to proceed in discussing other points not appealed.

FOR the purpose of electing the councillors of the burgh of Queensferry, at Michaelmas 1802, a meeting was summoned upon a premonition of twenty-four hours, on 28th September, at 11 o'clock in the forenoon, by some of the magistrates, without the interposition (as was alledged) of the chief magistrate, by whom another meeting was summoned that evening, but without the usual premonition of twenty-four hours. At both these meetings, an election of councillors was made, in different political interests; and accordingly a petition and complaint was presented by those who were elected in the evening, against those who had been elected in the forenoon, upon a variety of objections. The Court found, (February 1st 1803), 1*mo*, That "the meeting of the council of Queensferry, assembled under the authority of Bailie Martin, and others, on 28th September, at 11 o'clock forenoon, was unwarrantable, as not having been convened by authority of "the chief magistrate of the burgh, or in consequence of a requisition to him; "and that the meeting called by Bailie Macnab, in the evening of the same "day, was contrary to the standing act of council of the burgh; therefore, "that the proceedings at both these meetings were irregular, and incompetent: "2*do*, That it requires a majority in number of the whole members of council to constitute a legal quorum: 3*tio*, That burgesses are only admissible "by a majority of the council present at a legal meeting: 4*to*, Repel the objections to Deacons Ferguson and Johnston, founded on alledged non-residence, in "respect they were not timeously complained on in terms of the statute: 5*to*, "Appoint memorials to be given in to the Court against Thursday the 17th current, upon the objections offered against Hugh Arbuckle, for acting in double "capacity of interim town-clerk and councillor of the said burgh of Queensferry: "6*to*, Repel the objections to those councillors who are actually and *bona fide* in "the sea-faring business, whether as herring-fishers or boatmen, notwithstanding they may occasionally, when not at sea, follow other employments; and if "the objectors allege, that any of the councillors are not *bonâ fide* in that situation, ordain them to specify their names and occupations: 7*mo*, Appoint "the parties to give in condescendences, stating reciprocally their objections "to the election of the deacon of the tailors; reserving entire the consideration of the effect of what is before decided upon every other question respecting the burgh."

This judgment was submitted to review by the respondents, so far as regarded the first and third findings, when the following judgment was pronounced, (22d February 1803): "The Lords ordain the petitioners to give in a condescendence of the offer to prove, contained in page third of this petition; and "*quoad ultra* refuse the desire thereof." This related to article first of the interlocutor, it being now alleged and offered to be proved, that the order for

summoning the council to meet on the forenoon of the 28th was duly executed by the authority of the chief magistrate. No. 2.

The decision upon the point as to the burgesship having become final, the complainers petitioned the Court, praying for an application of the judgment by expunging from the roll certain persons who had been elected councillors, without being duly admitted burgesses. This petition was appointed to be answered, 10th June.

Against this part of the interlocutor relative to the burgesship, the respondents entered an appeal, which was served upon the complainer on 30th June 1804.

Memorials as to the right of Arbuckle to act in the double capacity of town-clerk and councillor, and the condescendence and answers as to some of the respondents not being *bonâ fide* seafaring men, having been givin in, a note was presented by the complainers to have these papers advised.

A doubt occured, how far the appeal might affect the other branches of the complaint, and this point was ordered to be argued in a minute and answers.

The complainers urged, That the appeal of a single point in a cause cannot have the effect of staying the proceedings in the other branches of it, if they have no immediate connection together. Now, no points can be more different in their nature than that which has been made the subject of appeal, and the other two still depending; for though the case should be given in favour of the appellants, it would not supersede the necessity of deciding the other two questions, nor in the slightest degree influence their merits. If it had been intended to stop all farther proceedings, the appeal should have been made against the whole interlocutor of 1st February.

The respondents, on the other hand, contended, That though no doubt the object of the appeal was limited, and not extending to the whole cause, yet the effect was, that, pending the appeal, no farther discussion could be had on any part of it, as the whole process, or a certified extract thereof, must regularly be produced in the House of Lords. So much was this understood, that § 48. of the bankrupt act, 23d George III. was introduced, to enable the Court, in sequestrations, to proceed in the necessary measures for preserving the sequestrated estate, when an appeal of any part of the proceedings depended. This was re-enacted and modified by section 55. of act 33d George III. An action may depend upon various points, but it must be considered as only one cause, which being by appeal in the House of Lords, cannot undergo discussion in any other Conrt.

This accordingly was the opinion of the Court, who found, "That as the "processes are under appeal, no further procedure can take place *in hoc statu.*"

For the Complainers, *Solicitor-General Blair, Boyle, Maconochie.* Agent *R. Jameson*, jun. *W. S.*
Alt. *H. Erskine, Jo. Clerk, Gillies.* Agent, *Jo. Syme W. S.*

F. *Fac. Coll. No. 133. p. 292.*