demption-money, together with a bond for whatever more should be found due. Upon this order of redemption, he pursues a declarator.

It was OBJECTED,—That a wadset could not be redeemed in part without the consent of the wadsetter, no more than a debt could be paid in part *invito creditore*. ANSWERED,—That all the wadset lands he had a title to were offered to be redeemed; so that, with respect to him, it was no partial payment, but a payment of all he could ask or crave.

REPLIED,—That, though the wadsetter had divided the wadset, yet he had not divided, nor consented to the division of the reversion; therefore, as, by the contract, the reverser was obliged to consign the whole sum before he could redeem, and as this benefit was not renounced by this wadsetter, or any of the purchasers from him,—the reverser must still follow the same method, and cannot pretend to redeem by parcels. And as he cannot redeem by consignation of the part, so neither can he redeem by consignation of the whole; because, having only title to a part of the reversion, he cannot redeem the whole. The consequence of which is, that, in the present circumstances, he cannot redeem at all, till he acquire the rest of the reversion, which gives him a title to redeem the whole; upon which he should premonish all the partial wadsetters to receive their respective sums, and then consign the whole. Which the Lords sustained.

1742. *February* 6. HUNTER, &c. *against* BINNIE, &c.

THIS was an action upon the Act 7 Geo. II., for recovery of the penalty imposed by that statute, upon the separatists in elections of magistrates and councillors in burghs. The first defence was a dilatory, *viz.* that, the defenders being in possession, the pursuers had no title to insist in this action till they had first declared their own election. Till then, they could not say, in terms of the statute, that the defenders had made a separate election; therefore, before they could proceed, they must wait the fate of a declarator of reduction which they have just now depending,—which the Lords sustained; so that it was not necessary to enter into the merits of the cause. However, as the other defences were pleaded upon at the bar, and reasoned on by the bench, I shall take notice of them. *2do*, A second defence was, that one of the councillors upon the side of the pursuers was not, at the time of election, qualified in terms of law: and he being set aside, the pursuers have no majority, but only nine to nine. To this it was ANSWERED,—That that councillor had afterwards qualified within the time allowed by the indemnifying Act, the effect of which, by that Act, is declared to be, the liberating him from all the penalties and incapacities, and validating all his acts done or to be done.

REPLIED,—That the Act indemnifies only for not qualifying within the time prescribed by law, and validates the deeds done during that period; but if, after that, a person goes on, in contempt of the indulgence shown by this Act, to act without taking the benefit of it, it is impossible that his after qualifying will validate these Acts. For that purpose another Act of indemnity would be requisite. This was the opinion of Arniston, and I believe of the majority.

ANSWERED,—2*do*, That suppose this objection was relevant, yet it was not proponable; because, by the Act in question, the minority are required tosubimt to the majority; and whatever objections they may have, that will thorise them to secede, but they must seek redress by a process of reduction.

This was the opinion of the President, but not of Arniston, nor I believe of the majority.

ANSWERED,—3*tio*, That supposing the vote of the councillor to be laid aside by this objection, yet the pursuers had still nine to nine, and, the provost being of their side, they had a majority by his casting vote. REPLIED,—That the provost's casting vote is not so clear a point, as upon it singly to condemn the defenders: that it is *contra communis juris regulas* that the same man should have two votes, and can only be defended by the general practice. But the particular practice of the burgh ought, in this case, to be of more weight; and it is affirmed, that, in Forfar, (which is the burgh in question,) the provost never took two votes, but always begun by calling the eldest bailie, and never voted himself but in case of an equality.

DUPLIED,—That the provost taking two votes was not *contra communis juris regulas*, no more than the preses taking two votes in a meeting of freeholders; that when one had an inherent patrimonial right and interest in himself to vote, he ought not to be deprived of his vote, but only in a case which seldom happens, an equality: this case is very different from the case of a preses in a court of justice, who has no interest to vote, and therefore does not vote but *ex necessitate* when the court is equally divided. Of this opinion was the President; of the other, Elchies, and to him inclined Arniston; but a great majority seemed to be of opinion, that the refusing the provost two votes, was not a sufficient foundation to subject the defenders to the punishment of the statute. 3*tio*, A third defence was, That here there was no local separation; that the defenders had remained in their seats, and voted for a different leet of magistrates, and thereafter chosen magistrates and council; that, if the minority was not allowed in some cases to make an election for themselves, as well as to object to the other election, the consequence would be, that, if wrong was done, there would be no other remedy but a reduction, by which the corporation would be dissolved, and the burgh brought to a poll; and, in that case, it is uncertain how far the Crown is obliged to renew their charter, by allowing a poll-election, and, if allowed, by what rules it is to be governed. Arniston thought that the mere act of election did not subject to the penalty, but that, to be separatists, in the construction of the statute, they behoved, after the election, to act separately, *qua* magistrates and councillors; which he thought the defenders, in this case, had done, by taking possession of the government of the burgh. This was the opinion of Elchies likewise, and so it was decided not long ago in the affair of Haddington. The President thought that the mere election subjected to the penalty.

By the Act 16 Geo. II. this point seems to be clear, that a local separation is not required.