

1780. *February 23.* Major ALEXANDER DUNDAS *against* Mr ALEXANDER FERGUSON.

MEMBER OF PARLIAMENT.

Is a mandate necessary to authorise a claim for a person residing abroad to be enrolled at a meeting of Freeholders?

[*Fac. Coll. VIII. 221; Dict. 8837.*]

BRAXFIELD. Two questions occur here; *1st*, Whether a claim to be enrolled may be made without a mandate? And, *2dly*, Whether a complaint for having been denied enrolment, may be made without a mandate? These two questions admit of different considerations. As to the *first*, I think that no mandate is necessary: The production of the title-deeds is sufficient to imply a mandate, and no hurt can arise to the claimant from the presenting the claim. As to the *second*, The case is different; for the complainer, if unsuccessful, is liable in penalties. Whenever a person is out of the kingdom, there must be a mandate, for there can be no action without a known pursuer.

PRESIDENT. Why does not some friend of Major Dundas apply to have a factor named for him in his absence? This would remove the principal objection.

COVINGTON. All that the law requires, is a certificate, by the Sheriff-clerk, that a *claim* has been lodged, and the same is the case as to *objections*. If the claim is good, so also is the complaint on the claim being rejected.

MONBODDO. The person who gave in the claim is presumed to have had authority, and he is presumed to have the like authority to support the claim.

KENNET. No action can be carried on for a person out of the country, without a mandate: How can *this* be distinguished from any other action?

On the 23d February 1780, "the Lords repelled the objection, and appointed the claimant to be enrolled."

Act. A. Wight. *Att.* W. Baillie, Ilay Campbell.

Diss. Alva, Kennet, Braxfield. Justice-Clerk and Hailes did not vote.