

1787. *February 28.* JAMES MILN of Old Montrose, Esq. *against* DAVID MITCHELL.

TACK.

A tenant not entitled to set up an ale-house on his farm.

[*Faculty Collection, IX. 498 ; Dictionary, 15,254.*]

SWINTON. A baron may make regulations for his barony. Ale-houses are nuisances, and he may exclude them.

MONBODDO. The landlord lets his ground for cultivation, and in that way alone can it be used.

HENDERLAND. No tenant can deteriorate the subject let. So it was found in the case of *John Balfour against George Inglis of Reidhall*; and in a later case from Dunbar, where an attempt was made to turn part of a lodging-house into a tavern. But these cases do not apply. Here the tenant does not deteriorate the subject by keeping an ale-house; on the contrary, he is benefited, and consequently his master. A baron has a right to erect a brewery, and then to prevent the importation of ale not brewed there; but here there is no brewery erected.

PRESIDENT. Is there no harm to erect a tippling-house to debauch my servants, and to collect together all the vagrants and thieves of the country?

ESK GROVE. I have no desire to deprive barons of any right belonging to them; but, on the other hand, I do not see how they can limit men in the lawful exercise of their calling. If the baron does not use his privilege of brewing, he cannot prevent others from selling ale. [He ought rather to have said, from buying ale; for, if the baron does not choose to sell ale, it would be unreasonable to say that the inhabitants of the barony must not *buy* ale for their own use; but that is nothing as to the power of *selling* ale.] A proprietor has no cause to complain so long as the subject is not deteriorated: he cannot prevent the introduction of manufactories.

On the 28th February 1787, "The Lords refused the bill of advocacy;" adhering to the interlocutor of Lord Braxfield.

Act. Henry Erskine. *Alt.* James Clerk.

Diss. Henderland, Eskgrove.

1787. *February 28.* ALEXANDER M'PHERSON *against* ROBERT ETTLES.

MESSENGER.

IN this case, the Lords were of opinion:—1st, That the constituent was liable for the act of the messenger in whose hands he had put the diligence,

and that there was no occasion to prove that he had actually authorised the diligence to be executed. *2dly*, That damages might be claimed and awarded, although the *quantum* of the damages be not ascertained. *3dly*, And, which is more material, that to oblige a man, unnecessarily, to find caution, by the intervention of friends, is in itself a damage; but, in respect of the poverty of the respondent Ettles,—

The Lords, 23d February 1787, “modified the damages to L. 5 sterling;” altering the interlocutor of Lord Elliock, who had found expenses due, but no damages.

Act. Mat. Ross. Alt. Wm. Honeyman.

1787. March 10. WILLIAM M'DOWALL *against* GEORGE CRAWFORD.

MEMBER OF PARLIAMENT.

Objection of the estate being reserved in the Freeholder, for the purpose of giving him a right to vote.

[*Fac. Coll. IX. 494; Dict. 8767.*]

ESKSGROVE. Were it not for the decision in the case of Neilson, and in that of Ferguson, I should have had doubts; but it is better, in election cases, to continue to act wrong, than to throw matters loose, and invite litigants to try every question over again. But here there is also a distinction: there was no claim to be put on the roll, but a defence against being struck off. In the *first* case, there must be possession for a year; in the *second*, the situation of things at the moment of election must be considered.

MONBODDO. It is clear that, two days before the election, Crawford had no right. The question is, Whether the removing the objection the day before the election is sufficient to give right? I cannot distinguish this from the creating of a new right, setting aside the decisions; and think the objection good.

BRAXFIELD. By a confirmation of the base infeftment, Mr Crawford could not have got back on the roll, unless in virtue of a disposition, charter, and infeftment expedite a year before coming upon the roll; but that is not the nature of the present case: the law does not require *possession* for a year, although it requires *right* for a year. If I should produce my infeftment, it would not be sufficient to object want of possession for part of the year, whether in consequence of back-bond or otherwise. Here Mr Crawford was properly put upon the roll, though he afterwards conveyed the subject. But the objection ceased to exist at the day of the election.

“The Lords dismissed the complaint.”

Act. Geo. Ferguson. Alt. Alex. Wight.

N. B.—This cause was judged on the 14th February 1787, but it is marked of the same date with the other causes from Renfrewshire as in my Index.