

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.

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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.