

1768. *November 17.* ALEXANDER FRASER of CULDUTHILL *against* SIR JOHN GORDON.

MEMBER OF PARLIAMENT.

The Trust Oath cannot be put before the meeting of freeholders is constituted by the election of Preses and Clerk.

[*Dictionary*, 8777.]

AUCHINLECK. The statute is express. It requires an alteration of circumstances allowed by freeholders. This implies that the freeholders must judge. As to the oath, it may be tendered before the choice of preses and clerk. This was the opinion of Craigie, Lockhart, and myself, in the case of *Selkirk*, where the election turned upon that circumstance. The losing party was so well satisfied of this, that there was no complaint lodged. The reason is obvious: As to taking oaths, the man, not the meeting, must judge. But still I think Sir John acted irregularly in tendering a new oath. If the preses may change the oath so as to prevent a man from taking it, he may do as was once done in Stirlingshire,—he may make a new oath to remove the swearer's scruples.

MONBODDO. The proceedings of this Head Court were subversive of all order, tending to turn a meeting of election into a Polish diet. The last commissioner took upon him to do what your Lordships would not do. He struck a freeholder *de plano* off the roll. Next, he administered a new oath. I doubt whether Culduthill was bound, at that period, to take even the statutory oath. However, he took it.

PRESIDENT. The Act 16th Geo. II. is not a penal law, but a law well calculated for preserving order in elections. The parliamentary preses must call the roll. He must read and do nothing more. I think the trust oath may be tendered at the very beginning, for otherways one might cast the election who had no right to vote. However, the oath which Sir John Gordon put was not the trust oath.

On the 17th November 1768, the Lords found Sir John Gordon liable in the statutory penalty for omitting to call Culduthill's name.

*Act.* Ilay Campbell. *Alt.* H. Dundas.

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