

1777. *June 13.* GEORGE DOVE *against* MAGISTRATES of INVERKEITHING and JOHN MASTERTON.

WHERE the question on which an action had begun is compromised, or at an end, the Lords are not in use to indulge parties by determining suits merely for the purpose of giving costs to the one party or the other. Thus, in an election complaint from the Burgh of Dumfries, the principal question having been suspended as unnecessary, the Court refused to give judgment upon the accessory question of expenses. See the case of *Provost Hamilton against Rutherford*.

This day, in a complaint, George Dove, tailor in Inverkeithing, against The Magistrates of Inverkeithing, and John Masterton; Dove insisted, that, having been elected deacon of the tailors of that burgh, the Magistrates had refused to admit him, on pretence that one of the persons who had voted for him was a minor; therefore he insisted to be received deacon; and for expenses. The Magistrates answered, That it was true they had at first refused to admit him on the objection stated, but afterwards, the objection not being proved, they had, and that he was received deacon and had taken his seat accordingly: therefore the complaint was unnecessary, and fell to be dismissed. Dove however insisted for expenses; but the Lords were of opinion, (13th June 1777,) "That, in respect it was now unnecessary to determine on the merits of the complaint, no expenses could be claimed under the Act of Parliament."

At the same time, even on the merits of the objection itself, it did not appear that the Magistrates had acted improperly; the objection of minority being certainly a good objection; only it was not proved.

WRIT OF EXTENT.

1774. *November 17.* BROWN and COMPANY *against* DONALD.

A WRIT of extent affects moveables from the teste of the writ; but it affects *nomina debitorum* only from the inquisition. So found 17th November 1774.

The benefit of a writ of extent is never refused to a cautioner in a crown debt, even although he has paid the debt, so as that it may be said to be extinguished. By paying the debt, the cautioner is considered as purchasing the debt from the Crown, who consequently is bound to give every aid to protect the purchaser, and to make the purchase effectual. This is the law and practice of England, and is the practice in Exchequer here.