

GRAHAM  
v.  
WESTENRA.

59 Geo. III, c.  
35, § 20.

1828.  
Feb. 8.

such a power ; but the 20th section of the act confirms, instead of removing my difficulty.

LORD CRINGLETIE.—You have limited yourself to a specific sum, and I am satisfied we cannot alter the sum in the verdict.

On a subsequent day, judgment was given against the application.

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

1827.  
July 16.

GRAHAM v. WESTENRA.

Damages against a superior for having conveyed away in liferent the superiority of the pursuer's lands.

AN action of damages for having conveyed away in liferent the superiority of the pursuer's lands, which had previously been conveyed to the pursuer's grandfather in fee.

DEFENCE.—The second conveyance was made *bona fide*, and partly by the fault of the pursuer. The defender will pay the sum received for it, upon the pursuer paying with interest the bill which his grandfather granted for the price.

ISSUE.

“ It being admitted that the late Douglas

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“ Duke of Hamilton and Brandon, by a dispo-  
 “ sition dated the 23d day of July 1790, con-  
 “ veyed, with absolute warrandice, to the late  
 “ Patrick Graham of Limekilns, the superiority  
 “ of the forty-shilling lands of Capellie, of old  
 “ extent, as described in the said disposition.

“ It being also admitted that Alexander  
 “ Graham, one of the original pursuers, was  
 “ son, and that the surviving pursuer is grand-  
 “ son and heir of line of the said Patrick Gra-  
 “ ham, and that the defender is the universal  
 “ representative of the said Douglas Duke of  
 “ Hamilton in his unentailed property.

“ It being also admitted that the defender  
 “ did, on the 6th day of August 1816, convey  
 “ the superiority of the said lands of Capellie  
 “ in liferent to James Allan Maconochie, Esq.  
 “ advocate, who was infest in the same, and  
 “ remained infest until the 15th day of June  
 “ 1826, when the disposition in his favour was  
 “ reduced and set aside.

“ Whether the superiority of the said lands  
 “ was illegally conveyed as aforesaid by the de-  
 “ fender to the said James Allan Maconochie,  
 “ to the loss, injury, and damage of the said  
 “ pursuer ?”

*Cunninghame* opened the case, and stated

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the facts, and claimed—the difference between the value of the vote in 1819, and at the present time,—the interest of that price from 1816, when the disposition was found,—and the value of the privilege of voting at the elections since 1816.

In a question as to the value of a freehold qualification, competent to prove the general price in the county, but not a particular instance.

An objection was taken to a witness stating the price which had been paid for votes at a particular period.

LORD CHIEF COMMISSIONER.—This evidence is not good as to one transaction, but it is good as to the general price.

*Cockburn* opened for the defender, and stated, That the jury ought to lean on the Court, as the difference was not as to fact, but principle: That the pursuer was the cause of that of which he now complains: That the conveyance in 1790 was for a temporary purpose, and though the pursuer has got the vote, he has not paid the price: That the pursuer misled the defender, and ought to pay the expence which he has caused. The power of voting is not a subject of pecuniary compensation, and we are ready to pay all we got for the liferent.

LORD CHIEF COMMISSIONER.—This is a very

extraordinary case, which arises out of a transaction in 1790, by which the Duke of Hamilton conveyed this vote to Mr Graham, the grandfather, and upon which no question is raised, till long after the death of both these parties. Damages are claimed, because the defender conveyed away the liferent of this vote ; but it is difficult to state the principle upon which the damage is to be calculated ; and it is better fitted for settlement out of Court.

A superiority is a thing of no tangible value ; it is merely a privilege of voting for a member of Parliament ; and the ideal value of this privilege varies according to the state of the parties in a county. A most respectable witness told you that he bought a vote for L. 1000, with an obligation on the seller to get a renunciation of a liferent on it ; but this ideal value is of so slippery a nature, that I cannot tell you that this is the sum to be given. Indeed, this case contains features showing the ideal nature of this property, for from 1790 till 1819 no step is taken to vindicate the right to this vote. No money was paid in 1790 ; and it is important to consider whether the second conveyance was made through the fault of those acting for the Duke of Hamilton, or through the fault of Mr Graham not keeping his titles where they could be found ?

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The first time the pursuer could have used this vote was in 1826, and I cannot tell you what sum ought to be paid for being deprived of this privilege. I cannot say that no damages should be given; but, considering the forgetfulness of both parties, it is not so clear a case that I can direct you what verdict to find, and therefore I leave it to your good sense; but if I were in your situation, I cannot say I would give the sum claimed, or that stated by the witness; but if any damages are given I think the sum named by the defender much the most judicious.

Verdict—For the pursuer, damages L.583.

*Moncreiff, D.F., and Cuninghame, for the Pursuer.*  
*Forsyth and Cockburn, for the Defenders.*  
(Agents,

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PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

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HOGG v. NIMMO.

1827.  
July 16.

Finding that a person was in *liege poustie* at the date of a deed.

THIS was an action of declarator brought by the trustees named in a deed, to have it found