1787. ———. JOHN CAMPBELL *against* JOHN M'DOWAL.

MEMBER OF PARLIAMENT.

An objection to a decree of division of the valued rent pronounced at a meeting held in consequence of an adjournment made at a previous meeting, where, of five Commissioners present, only one had taken the oaths, was repelled.

[*Fac. Coll. IX.* 495; *Dictionary*, 8671.]

ESKGROVE. If it appear, from the books of the Commissioners, *who* were qualified, and who not, the complaint is competent.

BRAXFIELD. Whenever there is need to have recourse to extraneous circumstances, a reduction is necessary; but not so when the objection appears from any part of the books.

"The Lords found the complaint competent."

HENDERLAND. The first question is, Whether a certain number be required to constitute a *quorum?* I think that a greater number than one is required. In the English part of the statute it is declared, that no duty can be discharged by one commissioner. When a *majority* is mentioned, there must be *three* at least, *that* being the smallest number which has in it a majority and a minority. As to the Scottish statutes, I should think that, by the Act 1690, three were required as a *quorum*. The Act of Convention, 1667, is very inaccurate, but it seems to relate to a majority and a minority, which cannot occur in a smaller number than three.

The next question is, Are the deeds of commissioners not qualifying void and null? I think that they are, in the English part of the statute; for, by the law of England, a thing prohibited is illegal, and the penalty adjected cannot make the deed legal. In the Scots part there is no incapacity declared; at any rate, the Act of Indemnity will sanctify the proceedings.

JUSTICE-CLERK. If an adjournment be made when there is no *quorum*, the next regular meeting, by ratifying the former proceedings, removes the objection.

ESKGROVE. I do not think that the want of qualification renders the acting of the commissioners null. The qualification, as to the extent of property, has incapacity adjected; but, as to taking the oaths, there is no incapacity adjected, only there is a penalty of L.100 Scots. The phrase in the statute is industriously varied. I do not concur in the opinion of the Court in the case of Swinzie. I shall not inquire what is the quorum necessary for the doing business: suppose there were nobody at the first meeting, or only one present, there could be no adjournment, and no after meeting could choose a convener, so recourse must be had to the *nobile officium* of this Court, if it has any such. This cannot be the meaning of the statute: fewer than a legal *quorum* can adjourn in the House of Commons, and, with us, in the Court of Justiciary. The law *Barbarius Philippus*, proceeds on a good principle, *ne plurima negotia bona fide gesta rescinderentur magno reipublicæ damno*, and this principle is received into our law.

BRAXFIELD. It is a rule of law, *quod fit lege prohibente nullum est;* and had that rule been introduced into the supply acts, we must have observed it; but there is no such thing said in these acts. The law *Barbarius Philippus* is much to the purpose, though not quoted at the bar; but there is little occasion to enter into that discussion, for any one may adjourn. Is it possible to suppose that the absence of the commissioners from the first meeting, whether that absence be accidental or intentional, can destroy the supply act for that year?

"The Lords repelled the objection to the division of the barony of Howstown, founded on want of powers in the commissioners."

Act. G. Ferguson. *Alt.* A. Wight, &c.

1787. *June* 14. JAMES M'ADAM *against* ALEXANDER M'WILLIAM.

BILL OF EXCHANGE.

Regular negotiation not required of such Bills as are granted merely for the accommodation of the drawer.

Bills pass by indorsation as well after as before protest.

[*Fac. Coll. IX.* 514; *Dict.* 1613.]

BRAXFIELD. Bills have the privileges of bags of money for six months. It is natural and common to protest them. Why then should not indorsation be good even after protest? And why should bills lose their privileges by indorsation?

ESKGROVE. If, by neglect, a bill should not have been protested, according to the defender's argument, it would be *good*:—if duly protested, it would be *bad.*

On the 14th June 1787, "The Lords decerned against the defender, and found expenses due."

Act. Mat. Ross. *Alt.* — Maconochie.

Reporter, Stonefield.

N.B. There were other questions here, but involved in facts.
