

announce their freehold qualifications, when it was necessary for the Duke's accommodation. No 151.

THE LORDS unanimously found, that the freehold qualifications in question were nominal and fictitious, and appointed the names of the respondents to be expunged from the roll of freeholders.

*Dean of Faculty, Wight, C. Hay, et alii. Alt. Tait, Gordon, et alii. Clerk, Gordon.*  
C. *Fol. Dic. v. 3. p. 420. Fac. Col. No 139. p. 275.*

IN some other cases from the same county, the persons whose freehold qualifications were brought under challenge, gave in no answers to the questions put to them. THE COURT, considering their silence as an acknowledgment of the particulars they were required to confess or deny, appointed them to be struck off the roll.

1790. December 8.

MARK PRINGLE *against* FREEHOLDERS OF ROXBURGHSHIRE.

By act 16th Geo. II. relative to the election of Members of Parliament, it is declared, that if no complaint against the title of any person enrolled as a freeholder be exhibited to the Court of Session ' within four kalendar months after ' enrolment, the freeholder enrolled shall stand and continue upon the roll, until an alteration of his circumstances be allowed by the freeholders, at a subsequent Michaelmas meeting or meeting for election, as a sufficient cause for ' striking or leaving him out of the roll."

It still, however, continued competent to put to every freeholder the oath of trust and possession, introduced by act 7th Geo. II. at any time before he proceeded to vote in the election of a Member of Parliament, or in adjusting the rolls.

In the case of the Freeholders of Forfarshire, No 141. p. 8753, the Court found, that in order to ascertain whether or not the qualifications of freeholders were nominal and fictitious, they should be likewise obliged to answer special interrogatories on the subject. But, upon an appeal, the House of Lords reversed that judgment, finding that the Court had no power to enter into such an investigation.

This was afterwards held to be the rule, down to the date of the decision in the case of Sir John Macpherson \*. That judgment, however, being brought under the review of the House of Peers, it was then found, that the trust-oath was not the only means of investigating the merits of the objection of nominal and fictitious, but that it was competent to do so *prout de jure*; and in particular, by calling on the party to answer pertinent interrogatories.

\* 6th March 1789, No 150, *supra*.

No 152.  
Other means than the trust-oath, for ascertaining the objection of nominal and fictitious, precluded by the lapse of four months after enrolment.

No 152.

As the trust-oath and the other modes of investigation, seemed to be thus connected together as co-ordinate means to the same end, an opinion began to prevail, that as the former might be employed at any time, notwithstanding the enactment relative to the four months, so also might the latter.

Accordingly, at a meeting of the freeholders of Roxburghshire in July 1790, for the election of a Member of Parliament, Mr Pringle upon his declining to answer certain questions relative to his qualification, was struck off the roll; although he had stood upon it for several years, without undergoing any change of his circumstances.

In consequence of this, he presented a petition and complaint to the Court; when

It seemed to be considered, that the statute 16th Geo. II. being the sole authority, under which the Court exercised jurisdiction in matters of that kind, they were of necessity to be governed by the limitation therein prescribed.

THE LORDS therefore found, that the freeholders had done wrong, and that Mr Pringle ought to be restored to his place in their roll.

Act. *Abercromby, Tait.*

Alt. *Dean of Faculty, W. Robertson.*

S.

*Fol. Dic. v. 3. p. 420. Fac. Col. No 155. p. 311.*

\* \* \* Several cases from the shires of Stirling, Renfrew, Orkney, &c. were determined in conformity with the preceding. And this case having been appealed the HOUSE OF LORDS, 5th March 1792, "ORDERED and ADJUDGED that the appeal be dismissed, and the interlocutors complained of affirmed."

*Nota.* The judgment of the Court of Session in this case is contrary to that afterwards pronounced 31st May 1791, Alexander Milne *contra* The Freeholders of Aberdeenshire, No 154. p. 8774. But the judgment of the Court in the case of Milne was afterwards appealed from, and reversed in the House of Lords; so that the question, as to trying the objection of nominality after the four kalendar months, may be considered as at rest.

No 153.

Proof *prout*  
*de jure* is  
competent of  
all circum-  
stances from  
which the  
nominality  
and fictitious  
nature of a  
qualification  
may be in-  
ferred.

1790. December 22. ILAY FERRIER *against* WILLIAM MOREHEAD.

MR FERRIER claimed enrolment, as a freeholder in the county of Stirling, at the meeting for election on 6th July 1790, as liferent-superior of certain lands which were of the requisite valuation.

Mr Morehead objected to the claim, on the ground of the titles being nominal and confidential; and the freeholders having refused to enrol, Mr Ferrer complained to the Court of Session.

In addition to the questionable nature of Mr Ferrer's right, as appearing from the writings exhibited by him, Mr Morehead offered a proof *prout de jure*