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 circumstances from which the nominality and fictitious nature of a qualification may be inferred.

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 Ferrier complained to the Court of Session.

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

of the fact of nominality and confidence, including the parole evidence of the different persons who had been concerned in the business. No 153.

Mr Ferrier, on the other hand, *contended*, that the admission of oral testimony in such a case was contrary to the statute of 1696, whereby it is declared, 'That no action of declarator of trust shall be sustained as to any deed of trust 'made for hereafter, except upon a declaration or back-bond of trust, lawfully 'subscribed by the person alleged to be the trustee, and against whom, or his 'heirs or assignees, the declarator shall be intented, or unless the same shall be 'referred to the oath of party *simpliciter*.' In support of this objection, he

Pleaded; The general rule certainly is, that solemn writings respecting landed property cannot be set aside by parole-testimony. So the law stood before the enactment of 1696, which only corrected an error in the construction of trust-rights, which had acquired some footing. In a question, therefore, with the granter of the liferent right here founded on, no evidence but the oath or writing of the liferenter could be listened to; and it is not easy to figure in what manner other parties, not immediately interested, can be allowed a more extensive range. It is true, that by the enactment of 7th George II. it is in the power of the freeholders to try, by the oath of any party claiming enrolment, whether his qualification is an independent one, or held in trust for another person; but this particular interposition of the legislature serves only to strengthen the general rule.

Answered; By the statute of 1696, it was provided, in affirmance of the common law, that trust in a question between the granter and grantee should only be proved by the oath or writing of the party. But from this it does not follow, that in every case the same method of proof must be adhered to. Thus, in a question between the creditors of a bankrupt, and a person to whom he has conveyed landed property, if the conveyance be objected to as fraudulent, or designed for the benefit of the bankrupt himself, parole-testimony is admitted. In this case, however, the objection being not merely that the right is confidential, but that it is nominal, intended to convey to the grantee the shadow only, and not the substance of a right, the regulation of the act 1696 is as inapplicable as it would be where an objection of forgery is made.

After hearing counsel, the Court had no difficulty in allowing the proof here offered.

Act. *Solicitor-General, Ross*, et alii. Alt. *Dean of Faculty, Wight*, et alii. Clerk, *Home*.

C. *Fol. Dic. v.* 3. *p.* 420. *Fac. Col. No* 60. *p.* 321.

Nota. The same decision was given at the same time in a similar case, Morehead *contra* Cheap. *See* APPENDIX.