

could not be ignorant of an intention to put the oath, must be viewed in the same light. Without this, it would be in the power of a person, once admitted to the roll of freeholders, to give his vote in the election of Preses and Clerk as long as he lived, however exceptionable his freehold qualification might be ; 9th December 1780, Ferguson against Campbell, No 158. p. 8778. ; 7th July 1784, Brodie against Urquhart, No 159. p. 8779.

All the Judges seemed to think, that if any freeholder had declared his purpose of putting the oath before Mr Davidson left the meeting, his absence afterwards would be construed into a refusal to swear, unless he could give a sufficient reason for his quitting the meeting. And a majority being of opinion, that Mr Davidson's conduct was not less ambiguous,

After advising the petition and complaint, which was followed with answers,

THE LORDS found, " That the freeholders did wrong in not expunging the name of Mr Davidson from the roll," &c.

A reclaiming petition was afterwards preferred for Mr Davidson, and refused.

Act. *Wemyss, et alii.*

Alt. *George Fergusson, et alii.*

Clerk, *Home.*

G.

*Fol. Dic. v. 3. p. 421. Fac. Col. No 102. p. 190.*

1790. February 12.

ROBERT BRUCE ÆNEAS M'LEOD and DAVID URQUHART *against* HUGH ROSE.

MR ROSE was enrolled among the freeholders in the county of Cromarty, as wadsetter of the superiority of certain lands. He afterwards acquired the right of reversion ; and being thus fully vested in the superiority, he conveyed the fee of it to another person, reserving to himself the liferent. After this, Mr Rose restricted his liferent to certain parts of the estate, in virtue of which he had been enrolled ; still, however, retaining as much as, in point of valuation, entitled him to stand on the roll of freeholders.

While matters were in this situation, an objection to Mr Rose's continuing on the roll was, in terms of the statute 16th Geo. II. lodged by Messrs MacLeod and Urquhart, two freeholders in the county. Mr Rose, at the same time, preferred a petition to the freeholders, stating the proceedings which had been held, and desiring to be continued on the roll, in virtue of the right of liferent still belonging to him.

When the Michaelmas meeting in 1789 was constituted, Mr Rose was not present ; and, accordingly, his name was not mentioned in the minutes taken down by the Clerk. But having afterwards come into the Court Room, without, however, proceeding to qualify himself for voting, by taking the oaths to

No 161.

No 162.

What deemed a refusal to take the oath introduced by the 7th Geo. II. cap. 16.

No 162. Government, Messrs M'Leod and Urquhart tendered to him the oath of trust and possession, introduced by 7th Geo. II. On this Mr Rose quitted the room, saying, that he was not a member of the meeting. As soon as he was gone, it was proposed in his behalf, that the freeholders should take under their consideration what had been stated in his petition.

A majority of the freeholders determined, that Mr Rose's name should not be expunged. They immediately after over-ruled the objection that had been lodged against him; and likewise found, that he should retain his place on the roll.

In a complaint to the Court of Session, Messrs M'Leod and Urquhart

*Pleaded*, Any person claiming to vote for a Member of Parliament, or having a right to vote in adjusting the roll of freeholders, may, in virtue of the statute of his late Majesty, be required, by any freeholder then present, to take the oath thereby introduced, in order to show that he is in the right and possession of the lands, in virtue of which he was enrolled; and, in case of his refusal, his name must be expunged from the roll of freeholders. Hence, after Mr Rose had declined to take the oath, when legally tendered to him, the freeholders did wrong in allowing him to continue on the roll.

Whether Mr Rose, after being expunged, could have been again enrolled, in virtue of a new claim, is of no importance. Not being judged of in the freeholders' Court, this question cannot be the subject of deliberation in the Court of Session. Indeed, were Mr Rose's freehold qualification ever so unexceptionable, as it now stands, it is evident, that, after having undergone so material an alteration in his circumstances, he ought not to be allowed to retain his former place on the roll; 9th December 1780, George Fergusson against Mungo Campbell, No 158. p. 8778.; 7th July 1784, Brodie against Urquhart, No 159 p. 8779.

*Answered*, The oath introduced by the 7th of the late King, instead of the one prescribed by the 12th Anne, can only be tendered to a freeholder when he is proceeding to vote in the election of a Member, or in adjusting the roll of freeholders; and, therefore, as Mr Rose had not even, by taking the oaths to Government, put himself in a situation to act as a freeholder, there was no room for trying the validity of his qualification in the way here pointed out. In the case of a person admitted to the roll, as the proprietor of a great estate, it has ever been understood, that his enrolment is effectual, notwithstanding any partial alienation, if the lands retained by him are sufficient for giving a right to vote. And the judgment of the freeholders must here be considered in the same light as if, before entering into the question, whether, on account of Mr Rose's declining to take the oath, he should be expunged from the roll, they had proceeded to give a determination on the claim of restriction given in for him, in which case, it is impossible to doubt that Mr Rose would have acted differently. The authorities quoted on the other side are quite inapplicable. In both cases, the freeholders required to take the oath had previously

acted as constituent members of the meeting, having voted in the election of Preses and Clerk. No 162.

*Replied,* The present case has no affinity to that of a freeholder who has conveyed away a part of the lands which belonged to him when he was enrolled; Mr Rose's original titles, and those on which he must now claim, being essentially different. But were the cases precisely the same, it would be of no consequence; for, whatever might have been said, if, before determining with regard to the propriety of putting the oath, the freeholders had restricted Mr Rose's claim, and if, after this, Mr Rose had declared his willingness to swear, the determination of the Court of Review must be regulated by the proceedings as they actually took place.

The first judgment of the Court was, for "dismissing the complaint."

But, after advising a reclaiming petition, which was followed with answers,

THE LORDS found, "That Mr Rose having refused to take the oath of trust and possession, his name ought to have been expunged from the roll."

Act. Blair, Abercromby.

Alt. Wight, Rolland.

Clerk, Gordon.

C.

Fac. Col. No. 113. p. 213.

1796. February 26.

TURNBULL against SIR DAVID CARNEGIE.

No 163.

At an election meeting, a freeholder having moved, that if any person should withdraw, after voting for Preses and Clerk, he should be held as having done so in order to avoid the trust oath; and, therefore, should be struck off the roll; a person having accordingly done so, a majority of the freeholders expunged him from the roll; and the Court of Session affirmed their decision. —See APPENDIX.

Fol. Dic. v. 3. p. 422.

1803. February 25.

GORDON against HERON.

No 164.

JOHN GORDON of Kenmore was enrolled a freeholder of the stewartry of Kirkcudbright in 1789, upon his whole lands, without distinction. Their general valuation was L. 1630 Scots. He afterwards sold the lands of Hill, valued at L. 60 Scots, for the purpose of redeeming the land-tax, without applying to have the valuation disjoined, nor to have his qualification restricted to the remaining part of his estate.

At the meeting on 23d July 1803, the oath of trust and possession was tendered to Mr Gordon by Major-General Goldie, and he refused to take it, but

The name of a freeholder, who had sold part of his estate, retaining a sufficient freehold, and who declined to take the oath of trust and possession,