

1790. *February 2.* SIR WILLIAM DUNBAR *against* SIR JAMES SINCLAIR.

SIR William Dunbar and others gave in a summary complaint against a judgment of the freeholders of Caithness, for having refused to strike Sir James Sinclair off the roll, though he had succeeded to the peerage of Caithness. THE LORDS found the complaint competent, and allowed the complainers to bring proof of their allegation.

No 248.

Fol. Dic. v. 3. p. 433. Fac. Col.

* * * This case is No 108. p. 7395. *voce* JURISDICTION.

1791. *March 3.*

SIR ALEXANDER CAMPBELL, Baronet, *against* DAVID BALLINGALL.

AT the meeting for electing a Member of Parliament in the county of Stirling, on 6th July 1790, David Ballingall, who for many years had been enrolled as a freeholder, was present.

At this time John Johnston, one of the freeholders, proposed that several questions should be put to Mr Ballingall, tending to shew that the titles on which his enrolment was founded were nominal, and had never been followed with possession.

Mr Ballingall refused to answer these questions; but declared his readiness to take the trust-oath. Mr Johnston then proposed, (as the minutes of election bear,) 'That as Mr Ballingall refused to answer, he should be held as confessed, and ordered to be struck off the roll of freeholders; and protested, that his oath at any future period should be void, and that he ought to be expunged from the roll of freeholders.'

The freeholders did not proceed to vote on the merits of those objections; and the minutes of election respecting Mr Ballingall only farther mention, that 'the oath of trust and possession having been tendered to the said David Ballingall, the same was taken by him.'

A petition and complaint was afterwards preferred to the Court of Session, by Sir Alexander Campbell, one of the freeholders, praying that Mr Ballingall's name should be expunged from the roll.

In bar of this complaint, it was stated, That such an application was only competent in three cases; *1mo*, On a refusal to admit a claimant; *2do*, On an improper admission; and, *3tio*, On a refusal to expunge; but that the case then before the Court was dissimilar from all these, the freeholders having given no decision on the question, Whether Mr Ballingall should be struck off the roll or not?

No 249.

A complaint received for not expunging the name of a freeholder, though no previous decision had been given in the freeholders' court on the point.

No 249. THE COURT were clearly of opinion, that the circumstance of the freeholders having entirely disregarded the motion made by one of their number, respecting Mr Ballingall, was equivalent to a refusal to expunge ; and, therefore, THE LORDS sustained the petition and complaint.'

Nota, Another question occurred at the same time, Whether a complaint, not entered within four months of the freeholder's enrolment, nor founded upon an alteration of circumstances, could be listened to ? In this case the COURT allowed a proof, which was taken. But the merits of the election having been previously determined by a Committee of the House of Commons, the COURT had no opportunity to give any decision on the import of it.

Act. *Geo. Fergusson*, et alii.

Alt. *Dean of Faculty*, et alii.

C.

Fac. Col. No 172. p. 353.

1791. March 3. GEORGE DEMPSTER and Others *against* CHARLES LYEL.

No 250.

An application for being continued on the roll, in virtue of a restricted qualification, equivalent to a claim for being enrolled, so as to authorise a summary complaint.

MR LYEL was enrolled in 1784 as a freeholder in the county of Forfar. Having conveyed to his son a considerable part of the lands in virtue of which he had been admitted to the roll, Mr Lyel, at the meeting for election on 2d July 1790, preferred a petition to the freeholders, in which he prayed that they would allow him to retain his former place in the roll, the lands still belonging to him being, as he alleged, sufficient for affording a freehold qualification. No objection being stated, the freeholders granted the prayer of the petition.

Of these proceedings Mr Dempster, and several other freeholders in the county, complained in the manner prescribed by the statute of the 16th George II. insisting that Mr Lyel had not produced sufficient evidence of the valuation of the lands retained by him, and that therefore his name should be expunged from the roll.

Mr Lyel objected to the competency of the complaint, and

Pleaded ; The jurisdiction of the Court of Session, in reviewing the proceedings held at committees of freeholders, is purely statutory, and limited to three cases, *1mo*, Where the claim of a person entitled to be enrolled is rejected ; *2do*, Where a person who stood upon the roll is unjustly struck off ; and *3tio*, Where a person is enrolled whose titles are exceptionable.

Farther, although in this case the proceedings of the freeholders were liable to review, still the application here made must be considered as inadmissible. If the freeholders had been dissatisfied with the evidence laid before them, in order to shew that the retained lands were sufficient to give a right of voting, they might have rejected the claim of restriction ; but as no objection was stated to the claimant's continuing on the roll, he could not be deprived of his place in it. And in the same manner, although the Court of Session, in reviewing the proceedings of the freeholders, may find that the valuation of the