

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 as competent.'

*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

retained lands has not been properly ascertained, this will not authorise a striking off the roll; 9th August 1774, *Stewarts contra Daniel Campbell*, No 209. p. 8834.

No 250.

*Answered*; The statutes authorising the Court of Session to controul the proceedings of freeholders being of a remedial nature, ought to be so construed as to fulfil the purpose of the Legislature. In the present case, such a construction is evidently necessary. Without it, if a freeholder, after an alteration of circumstances, could prevail on a meeting to permit his continuing on the roll, although he had no right so to do, the wrong would be irreparable; *Wight on Elections*, page 136; 15th January 1766, *Ross of Aitnoth and others contra Sir John Gordon and Leonard Urquhart*, No 244. p. 8864.

If in such cases as the present, the Court of Session may interpose, no reasonable objection can be here stated to the form of the application. The judgment of the freeholders may be considered, either as an enrolment of the party on his new and restricted qualification, or as a refusal to sustain what was a sufficient objection to the former enrolment. And in either of these views the Court are authorised to give redress, by directing the name of the party to be expunged. The case referred to on the other side was very different from the present one, the proceedings having been held at a Michaelmas meeting, where no objection could be listened to which had not been lodged two months before.

By a considerable majority of the Judges, the application for a restriction was viewed as an objection made by the freeholder himself to his continuing on the roll, in virtue of the lands formerly belonging to him.

And therefore the LORDS found, that the petition and complaint was competent.

Act. *Mat. Ross, Hope.* Alt. *Hay.* Clerk, *Sinclair.*  
G. *Fol. Dic. v. 3. p. 433.* *Fac. Col. No 173. p. 354.*

---

### SECT. III.

Of Objections not stated, or Evidence not produced to the Freeholders.

1761. July 28. STEWART *against* DALRYMPLE.

FOUND, that objections not stated to the court of freeholders, may be insisted in before the Court of Session.

No 251.

*Fol. Dic. v. 3. p. 434.* *Fac. Col.*

\* \* \* This decision, affirmed on appeal, April 1. 1762, is No 18. p. 8579.