

action depend upon what the Court can do? If the Court can do nothing, the freeholder cannot sue. May 23. 1821.

*Lord Chancellor.*—We have not here in discussion what the Court can do.

*Mr. Grant.*—In the parallel case of a reduction of a decree of valuation, the question has always been, Whether the freeholder had a legal interest to pursue? This interest might be various—disturbing the mode of taxation, &c. There never was a question in such actions, that a person, as a freeholder merely, had no title to pursue.—Mr. Grant read the terms of the summons.

*Lord Chancellor.*—You are to restrict, then, the generality of the prayer by the specialty of a recital.

*Lord Redesdale.*—How can there be a competency to sue, if nothing can be done under the action?

*Lord Chancellor.*—I give no opinion as to whether any thing can be done or not under this summons, but we must use great caution in cases from Scotland, and particularly in cases like this, how we proceed in point of form. We should have first had from the Court itself its opinion what it could have done ultimately under the summons. I should have wished the final decree to be pronounced before the appeal came here.

*Appellant's Authorities.*—(1.)—1457, c. 75; 1503, c. 78; 1587, c. 114; 1681, c. 21; 16. Geo. II. c. 11; 1. Wight, 338.—(2.)—Lord Galloway, Feb. 10. 1681, (7835); Colt, &c., Jan. 9. 1756, (7782.)

*Respondent's Authorities.*—(1.)—Bell on Elect. p. 402, and cases there.—(2.)—Wight, 185; Earl of Fife, July 8. 1774, (8850.)

SPOTTISWOODE and ROBERTSON,—J. CAMPBELL,—Solicitors.

(*Ap. Ca. No. 23.*)

WILLIAM ARBUTHNOT, Appellant.—*Gifford—Cranstoun—  
L' Amy—Walker.*

JAMES GIBSON, Respondent.—*Thomson—Fullerton—Murray.*

*Title to Pursue.*—1. Whether it is competent for a freeholder, merely qua such, to insist in a reduction of the titles of a party who has not actually claimed to be enrolled, but has made up titles with that view? And, 2. Whether, if it is not, the objection to the title to insist in that action can be removed by the defender being enrolled pending the process? The Court of Session having found in the *negative* on the first point, and in the *affirmative* on the second, case remitted for reconsideration.

MR. ARBUTHNOT having acquired from the Magistrates of Edinburgh an assignation to a charter, under the Great Seal, of certain lands in a situation similar to those which had been con-

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*See Note 37-F.  
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2<sup>D</sup> DIVISION.  
Lord Pitmilley.

May 23. 1821. veyed to Sir William Forbes, as mentioned in the two preceding cases, he was infest on the 24th of July 1816. On the 18th of December 1817, and before Mr. Arbuthnot had claimed to be enrolled as a freeholder of the county of Edinburgh, Mr. Gibson raised an action of reduction of his titles, in the same character, and on the same grounds, and having the same conclusions, as in the case of Sir William Forbes. In defence, Mr. Arbuthnot pleaded, 1. That as he was not enrolled as a freeholder, Mr. Gibson had neither interest nor title to insist in the reduction; and, 2. That even although he were enrolled, still Mr. Gibson could have no valid title to pursue a reduction. Lord Pitmilley sustained the former of these objections, and dismissed the action; and observed, in a note, that ‘ a difficulty certainly arises in this case, from the decisions sustaining the title of freeholders to reduce a division of valuation, when the party has not been admitted on the roll, and that difficulty has not been taken notice of by the defender; but still the Lord Ordinary thinks, that the decision in the case of the Earl of Fife v. Gordon, 8th July 1774, and the principle upon which that case was decided, ought to regulate the present case. The point now under discussion does not appear to have been argued in the cases referred to, in which the title to reduce divisions of valuations was sustained.’ Thereafter Mr. Arbuthnot claimed to be admitted on the roll of freeholders, and was enrolled accordingly. On this change of circumstances being brought under the consideration of the Lord Ordinary, he pronounced this interlocutor: ‘ In respect the defender has, since the date of the Lord Ordinary’s last interlocutor, claimed enrolment on the roll of freeholders, and has been enrolled in virtue of the titles which have been brought under reduction by the pursuer, alters the interlocutor reclaimed against, and sustains the pursuer’s title to insist in the present action for reducing the defender’s said titles, so far as the pursuer is interested as one of the freeholders standing upon the roll of freeholders of the county of Mid Lothian, as libelled, to reduce the defender’s said titles.’ To this interlocutor the Court, on the 19th of May 1820, adhered. Mr. Arbuthnot having entered an appeal, the House of Lords ‘ Ordered that the cause be remitted back to the Court of Session, to review the interlocutors appealed from generally, and especially having regard to the summons and the prayer thereof, and to what the Court, having such regard, can or cannot, according to law, further do in this cause; and having also especial regard to the period at which the appellant was enrolled in the roll of freeholders.’

SPOTTISWOODE and ROBERTSON,—J. CAMPBELL,—Solicitors.

(Ap. Ca. No. 24.)