

No 235.

the son instead of George the father. Found that the father could not be thereby affected.

Answers were given in in name of Thomas Gibson younger of Boreland, setting forth, that he was not on the roll, nor claimed to be during his father's life.

The complaint, on seeing the mistake, was executed against George, and coming to be insisted in, the LORD ORDINARY, 11th January 1745, on advice with the LORDS, found, 'That Thomas Gibson of Boreland did not stand on the roll of freeholders for the shire of Tweedale; and found that George Gibson the father not being contained in the complaint, the complainers could not be heard to object to the said George why he ought not to stand on the roll of freeholders.'

A petition was presented, which was ordered to be answered by George, and answers were given in thereto, in the name of the father and son.

*Pleaded* for the petitioner, It was only a misnomer, and seeing *constabat de persona*, it were unjust on this pretence to continue on the roll a person who had no right to be there.

*Answered*, it was more than a misnomer, a wrong person had been complained upon, a wrong person summoned, and it was now past time to complain against George the father, after the lapse of the time prefixed by the statute; that the second execution was without a warrant, the order of the Court being to cite Thomas, against whom the complaint was.

THE LORDS adhered.

Act. *Menzies*.

Alt. *Geddes*.

*Fol. Dic. v. 3. p. 437. D. Falconer, p. 76.*

1761. July 28.

STEWART *against* DALRYMPLE.

No 236.

By act of sederunt 15th November 1760, it is ordered, that each petitioner against the proceedings of freeholders shall present a separate petition for himself, and that each petition shall complain against one defender only, except where more petitioners or defenders may be necessarily connected. Some time before this enactment, a petition had been presented in the name of several different complainers, and upon as many different grounds. *Objected*, It is a general rule of law, that different actions cannot be accumulated in the same libel.—THE LORDS repelled the objection, in respect of the practice in similar cases.

N. B. Though all the interlocutors on the questions between these parties are collected at the date of the last of them, the judgment upon this particular objection must have been prior to the act of sederunt.

*Objected* to the service of a summary complaint, That instead of extracting the interlocutor, the complainers had borrowed up the principal interlocutor itself, and delivered it to a messenger to be executed. *Answered*, The principal

order has as great authority as an extract; and the method followed in this case is not unusual, where the party is at hand.—THE LORDS repelled the objection. No 236.

*Fol. Dic. v. 3. p. 432. & 437. Fac. Col.*

\* \* This case is No 18. p. 8579.

1762. CARRUTHERS of Denby *against* FERGUSSON of Craigdarroch.

No 237.

A KALENDAR month is from any day in one month to the same nominal day in the next month. In this case, the Court of Session was of opinion, that a complaint moved by the Lord President on the 6th of February was within four kalendar months of a meeting of the freeholders held upon the 6th of October preceding. See APPENDIX.

*Wight, p. 133.*

1766. *January.* YOUNG *against* JOHNSTON.

No 238.

WHERE the minutes of the meeting do not bear by whom an objection was stated, a person complaining against the judgment of the freeholders must make all those parties to the complaint who voted for sustaining the objection; and a misnomer of any one of them will be fatal to the complaint. See APPENDIX.

*Fol. Dic. v. 3. p. 437.*

\* \* See Tenant against Johnston, No 54. p. 3720, *voce* EXECUTION.

1767. *February 17.* GORDON of Newhall *against* JOHNSTON.

No 239.

WILLIAM GORDON of Newhall claimed to be enrolled as a freeholder of Cromarty; and being refused, complained to the Court of Session upon the statute. Mr William Johnston was enrolled at the same meeting; and Mr Gordon complained of his enrolment. Waving the merits, Mr Johnston *pleaded*, That the complaint was incompetent, in respect Mr Gordon did not then stand upon the roll. THE COURT appointed an answer upon the merits of the complaint; after which they took up Mr Gordon's first complaint, and having ordained him to be inrolled, repelled the preliminary objection, that he was not upon the roll, in respect of their previous interlocutor, by which his title to be upon the roll was sustained. See APPENDIX.

*Fol. Dic. v. 3. p. 432.*