

No 243.
presented to
them, found
liable in the
expense of
serving a pe-
tition and
complaint a-
gainst their
judgment, be-
cause they
had omitted
to mark in
their minutes
one of their
number as ob-
jector, by
which it be-
came necessa-
ry to serve
the complaint
upon them all.

A majority ' found that the claim and titles did not precisely correspond ; and, therefore, refused to admit the claimant to the roll.

The minutes did not specify by whom the objection was made or supported.

Mr Govan presented a petition and complaint, which was served against Sir George Douglas the preses, and all the other freeholders present at the meeting, and was followed with answers, &c.

The Court, without entering into the merits of the judgment of the freeholders, had no doubt that the complainer, in consequence of the explanations and productions since made by him, was now, at least, entitled to be admitted upon the roll ; and while it was thought he had been to blame for not attending the meeting, or sending some person for him, they were of opinion, that some individual freeholder, present at it, ought to have been marked as objector, by which means the complainer would have been saved the expense of serving the petition against the rest.

THE LORDS unanimously " found the freeholders did wrong in refusing to admit the complainer upon the roll of freeholders of said county ; therefore, granted warrant to, and ordained the Sheriff-clerk of said county, to add his name to the roll accordingly : Found the petitioner entitled to the expenses of serving this complaint, of which allowed an account to be given in, and of the full expense of extract, but no other expense."

Alt. *J. W. Murray.*

Act. *Geo. Fergusson, Boyle.*

Clerk, *Pringle.*

D. D.

Fac. Col. No 209. p. 495.

S E C T. II.

Upon what grounds is a Complaint admitted.

1766. *January 15.*

Ross of Aitnoch and Others *against* Sir JOHN GORDON and LEONARD URQUHART.

No 244.

THE freeholders of Cromarty superseded the enrolment of three claimants, till the issue of a reduction of the decrees of division of their *cumulo* valuations. The claimants presented petitions and complaints. *Answered, imo*, The case does not fall under the statute ; the respondents not having refused to enrol, but delayed giving judgment till the event of the reduction ; *2do*, The Lords could not order enrolment *de plano*, as they were not competent in the first instance ; the utmost they could do was to remit to the freeholders to determine upon the me-

rits of the claims at their next Michaelmas meeting. THE COURT repelled the answers, and ordered the claimants to be enrolled, and refused a petition for the respondents, offering still to enter into their objections to the titles of the claimants.—See APPENDIX.

No 244.

Fol. Dic. v. 3. p. 433.

*** The HOUSE of LORDS affirmed both judgments.

1768. February 10. GORDON of Newhall *against* WILLIAM PULTENEY, Esq.

No 245.

WILLIAM PULTENEY being at Michaelmas 1766 admitted upon the roll of freeholders for the shire of Cromarty, Gordon of Newhall, previous to the Michaelmas meeting 1767, lodged with the Sheriff-clerk his objection why Mr Pulteney should not be continued on the roll, which was, that his circumstances were altered by a sale of the subject upon which his qualification depended. By Mr Pulteney's keeping out of the way, there was no opportunity to prove the objection by his oath; and as the objector had no other relevant proof ready, it carried to repel the objection as not instructed.

A summary complaint sustained, where an objection for striking a person off the roll had been repelled, though by the literal words of the statute it is allowed only in three cases; 1st, Where a person is refused, 2dly, Where he is struck off the roll; and 3dly, Where he is unjustly enrolled.

In a complaint to the Court of Session of this supposed wrong done by the freeholders, the Court was unanimous, that the freeholders had done no wrong. But then it was doubted, whether it was not competent to admit the objection to be proved in this Court. *Ratio dubitandi*, In questions of election, the Court of Session has no original jurisdiction, being only a Court of review or appeal; and, therefore, that if the court of freeholders have not been guilty of any wrong, the complaint ought to be dismissed. A distinction was urged, on the other hand, between refusing to sustain a man's title to be put upon the roll, and refusing to sustain an objection to his being continued upon the roll. In the former, if the evidence of the claimant's title be defective, the freeholders must reject his claim. A complaint of wrong to the Court of Session would be ill founded; nor would his offer to supply the defect be listened to, leaving him to apply to the next Michaelmas head-court. But, in the latter, where the objection is rejected for want of evidence, the Court is bound in equity to admit documents to be produced before them for proving the objection. There can be no other remedy where the sale by Mr Pulteney is not upon record. Mr Pulteney will keep out of the way to prevent expiscation by his oath; and a court of freeholders have no power to force production of any writings.

“THE COURT accordingly sustained themselves competent, and gave warrant for production of writings to prove the objection.”

This case deserves to be kept in remembrance, as an instance of supplying a defect in an act of Parliament, in order to complete the remedy intended by it. For my part, I thought the remedy too bold, because the complainer had a pro-