

“ Found, That the freeholders did wrong, and ordained Mr Roebuck’s name to be added to the roll.”

No 147.

Act. *Geo. Fergusson*, et alii. Alt. *Dean of Faculty*, et alii. Clerk, *Robertson*.
C. *Fol. Dic. v. 3. p. 419. Fac. Col. No 319. p. 493.*

1787. February 20. WILLIAM M'DOWALL against GEORGE CRAWFORD.

IN the year 1781, George Crawford was enrolled among the freeholders of the county of Renfrew, as superior of the lands of Langside.

In the year 1783, he conveyed his right in these lands by a disposition, containing a procuratory of resignation, and a precept of sasine, to Lord Sempill, who immediately took infeftment in virtue of the precept.

So matters continued till the year 1786, when an objection was regularly lodged by Mr M'Dowall to Mr Crawford's continuing on the roll; and, on 9th October of that year, being the day before the meeting for election, Lord Sempill executed a procuratory of resignation, *ad remanentiam*, in the hands of Mr Crawford, and the instrument following thereon was immediately recorded.

At the meeting for election, Mr M'Dowall objected to Mr Crawford's qualification; *1st*, As being contrary to the act 10th Ann. requiring the right of the freeholder to be complete twelve months before the election, Russell *contra* Ferguson, 7th March 1781, *infra, b. 1.*; and, *2dly*, Because the estate having been clearly reserved in Mr Crawford, for the purpose of giving him a right of voting, was thus in defraud of the statutes relative to elections, particularly that of 7th Geo. II.

This objection, which was over-ruled by the freeholders, having been repeated in the Court of Session, in consequence of a complaint in the name of Mr M'Dowall.

“ THE LORDS repelled the objection, and dismissed the complaint.”

Act. *Blair*, et alii. Alt. *Wight*, et alii. Clerk, *Robertson*.
C. *Fol. Dic. v. 3. p. 419. Fac. Col. No 320. p. 494.*

1788. March 6. HENRY LINDSAY against WILLIAM DRYSDALE.

MR LINDSAY's claim to be enrolled among the freeholders of the county of Fife, as liferent-superior of certain lands, was rejected at the meeting for election in 1787, the freeholders considering the feudal titles exhibited for him as nominal and fictitious.

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No 148.
Objection of the estate being reserved in the freeholder for the purpose of giving him a right to vote, repelled.

No 149.
The trifling pecuniary value of an estate giving

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a freehold
qualification,
is not, *per se*,
a sufficient
proof of nomi-
nality,
where there
are no cir-
cumstances
to establish
the existence
of any latent
or implied
trust.

He afterwards preferred a complaint to the Court of Session. Answers were given in, in the name of Mr Drysdale, one of the freeholders; and Mr Lindsay was required to confess or deny the following particulars:

1^{mo}, Whether the right which had been made over to him by his elder brother, the fiar of the superiority, and proprietor of the lands, was not entirely gratuitous?

2^{do}, Whether his brother had not defrayed the expense incurred, not only in framing the necessary writings, and in entering the claim in the freeholders' court, but also in discussing the legality of it in the Court of Session?

3^{to}, Whether the feu-duty exigible by the claimant was not 2s. 6d. yearly, doubled at the entry of an heir or singular successor?

4^{to}, Whether the right had not been granted by his brother, and received by him, for the sole purpose of giving him a title to vote, and without any regard to the pecuniary emoluments arising from it?

5^{to}, Whether, though the claimant had granted no written obligation to renounce his right when it was convenient for his brother, he did not consider himself as bound in honour to do so? And

6^{to}, Whether, though the claimant had not positively promised to exercise his right of voting at the will of his brother, he did not, however, consider himself as obliged to give his vote to the candidate patronised by his brother, in opposition to his own wishes?

To these questions Mr Lindsay gave in answers, in which he admitted the truth of the four first articles; but, with regard to the 5th and 6th, he declared, That he considered himself to be under no obligation whatever, express or implied, either to give up his liferent, or to exercise his right of voting at the will or for the behoof of his brother, any more than if he had acquired the same right by purchase from a stranger. These answers were subscribed by Mr Lindsay, who professed his readiness to undergo a judicial examination on oath, or to enter into any other enquiry, by witnesses or otherwise, which should be thought necessary for a full and accurate discussion of his right. This enquiry, however, Mr Drysdale declined, chusing to rest his argument on the circumstances which were acknowledged as sufficient for his purpose.

As the general arguments on both sides were the same with those used in the questions occurring in 1786-7, on occasion of the election in the county of Renfrew*, it is unnecessary here to repeat them.

By some of the Judges it was thought, that by the proceedings which had been recently held in the Court of Session, and in the House of Lords, they were now at liberty to enter into a full disquisition as to the legality of what are commonly called nominal and fictitious votes, unrestrained by any former decisions. The majority of the Court, however, being of opinion, that the trifling pecuniary value of the right was not by itself a sufficient proof of nominality,

* See 20th February 1787, Macdowall *contra* Buchanan, &c. No 142. p. 8759

and that the other circumstances of the case did not establish the existence of any latent or implied trust in Mr Lindsay,

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THE LORDS found, That the freeholders had done wrong in refusing to admit Mr Lindsay to the roll.

For the Complainer, *Dean of Faculty, Macleod Bannatyne.* Alt. *Blair, Geo. Fergusson.*
Clerk, *Orme.*

G.

*Fac. Col. No 20. p. 34.*1789. *March 6.*

SIR WILLIAM FORBES, Bart. and Others, *against* SIR JOHN MACPHERSON, Bart.

SIR JOHN MACPHERSON, as liferent superior of certain lands of the requisite valuation, was enrolled as a freeholder in the county of Aberdeen.

Of this enrolment Sir William Forbes, and several other freeholders in the same county, complained to the Court of Session, in terms of the election statutes, contending, That the rights on which Sir John Macpherson's claim was founded, were nominal and fictitious.

In order to shew that this was really the case, the complainers required Sir John to confess or deny,

1mo, Whether the conveyance of the lands contained in Sir John's titles was not made out without his previous consent or knowledge? At least, whether Sir John was not solicited by the Duke of Gordon, from whom he derived his right, to accept of a freehold qualification?

2do, Whether the expense of making out the title-deeds was not paid by his Grace?

3tio, Whether those title-deeds were delivered to Sir John before his enrolment? or whether they were in his possession at any time previous to this period?

4to, Whether, when he was informed of the conveyance, he thought himself called upon to defray the expense of defending his title in the Court of Session, or elsewhere?

5to, Whether he did not, when he accepted of this conveyance, and does not still, consider himself as in honour bound to vote for the candidate who may be patronised by the Duke of Gordon, and to renounce his freehold qualification at his Grace's pleasure?

In the answers given in for Sir John, it was maintained, That the particulars mentioned by the complainers could not be proved in the manner here proposed.

In deciding this matter, two votes were put; *1st*, Whether it was competent to examine Sir John on the proposed interrogatories? And, *2dly*, Whether, on account of the small value of the liferent estate in a pecuniary view, as appear-

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In order to discover whether a qualification was nominal and fictitious, a number of particular interrogatories were proposed. The Court of Session found it incompetent to put them; but the judgment was reversed in the House of Lords.