

No 240.

1773. *March 3.*GORDON *against* ABERNETHY.

COMPLAINT was moved in Court, on Saturday 23d January, and was then ordered to be served ; but the interlocutor was not written out, nor signed by the Lord President, till Tuesday the 26th. It was *objected*, That the complaint could not proceed, because Monday the 25th was the last day of the four kalendar months. THE LORDS over-ruled the objection. The act of Parliament only requires the application to be made to the Court of Session within four months : It is of no consequence, that, through accident or hurry of business, the warrant is not signed till after that period.

Fol. Dic. v. 3. p. 432. Fac. Col.

*** This case is No 208. p. 8833.

No 241.

1774. *February 23.*DUNBAR *against* URQUHART.

A JUDGMENT of the court of freeholders, striking a party off the roll, though acquiesced in for four months, may notwithstanding be made the subject of complaint to the Court of Session.

Fac. Col.

*** This case is No 198. p. 8826.

No 242.

A complaint to the Court of Session respecting enrolment must be served against all those who offered objections in the freeholders' court.

Nominal and fictitious.

1790. *May 15.*JOSEPH WILLIAMSON *against* JOHN SMITH.

MR WILLIAMSON was enrolled among the freeholders in the county of Perth, as proprietor of the lands of Dungarhill. These lands in 1788 he sold to the Duke of Athol.

Before the bargain was concluded, it was proposed by Mr Williamson that he should retain his freehold-qualification ; but the conveyance made out in favour of the Duke on 7th February 1789, containing procuratory of resignation and precept of seisin, was absolute and unconditional. After the Duke had taken a base infeftment, he granted to Mr Williamson, on 11th August 1789, an obligation not to take a charter of confirmation from the Crown, nor to execute the procuratory of resignation during Mr Williamson's life. This obligation, to which a penalty of L. 10 Sterling was annexed, was immediately inserted in the register of seisins.

At the Michaelmas meeting in October 1789, an objection arising from the above transaction was stated to Mr Williamson's remaining on the roll, by Mr Smith and two other freeholders ; and the objection being sustained, Mr Wil-

liamson complained to the Court of Session; but the complaint was directed against Mr Smith alone. In defence, it was

Pleaded; By the statute 16th of his late Majesty, which regulates the method of proceeding in questions respecting freehold-claims, it is provided, that the Court of Session may grant a warrant for summoning 'the person or persons,' upon whose objection a freeholder has been struck off the roll. The present complaint must therefore fall to the ground; only one of the three freeholders by whom objections were offered having been made a party to it.

Farther, the judgment of the freeholders was evidently well founded. After the conveyance in favour of the Duke of Athol, the right of the granter became altogether nominal; what is reserved being neither a *lifereit* nor a *fee*, but a mere tolerance to vote as a freeholder, and this defeasible at any time on payment of L. 10 Sterling. Such an agreement seems to be wholly incompatible with the genius of our political law; 13th February 1745, Gibson, No 235. p. 8859.

Answered; The argument arising from the method of giving notice of the complaint is far too critical, and ought not to be listened to for setting aside a legal right to vote. Nor is the objection to the qualification itself better founded. When the complainer was enrolled, his title was unexceptionable; and although it was at one time in the power of the purchaser from him to put an end to it, the agreement which was afterwards made brought back matters into their former situation. In several recent cases, proceedings of the same kind have been sanctioned by the Court; and however insignificant, in a pecuniary view, the reserved right may be, it involves the privilege of voting, when held under no confidential tie, as much as the most valuable estate holding of the Crown; 5th March 1755, Nielson, No 179. p. 8804.; 7th March 1781, Russell *contra* Ferguson, No 200. p. 8828.; 20th February 1787, Macdowal *contra* Crawford, No 148. p. 8767.

The judgment of the Court proceeded on the preliminary objection. Several of the Judges, however, expressed their opinion, that the complainer had no right to remain on the freeholders' roll.

After advising the complaint, which was followed with answers and replies, THE LORDS dismissed the complaint.

Act. Maconachie.

Alt. C. Hay.

Clerk, Menzies.

C.

Fac. Col. No 128. p. 248.

1796. *March 4.*

WILLIAM GOVAN *against* Sir GEORGE DOUGLAS, Baronet, and Others.

WILLIAM GOVAN, previously to the Michaelmas meeting of Roxburgh in 1795, lodged a claim for enrolment with the Sheriff-clerk.

Neither he, nor any person for him, attended the meeting.

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No 243.
A meeting of
freeholders
who had re-
jected a claim