

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

**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-