No 154.

But if it does apply to that objection, then the unavoidable consequence is, that the subsequent part of the clause must in like manner apply to it; for surely no words can be more express than these: 'So as such application be 'made within four kalendar months after such enrolment.'

THE COURT "found the objection of nominal and fictitious competent to be proponed after the lapse of four kalendar months."

To this judgment, on advising a reclaiming petition, and answers, the Court adhered.

For Mr Milne, *M. Ross*, et alii. Alt. *Wight*, et alii. Clerk, *Gordon*.

S. *Fol. Dic. v.* 3. *p.* 420. *Fac. Col. No* 182. *p.* 368.

Similar judgments were afterwards given in various other cases.

*** This case having been appealed, the judgment of the Court of Session was reversed.

1797. *February* 10. JOHN MACADAM *against* JAMES HOME.

No 155.
The objection of nominal and fictitious against a liferent of superiority, found to be removed by an onerous disposition to the fee of it, granted on the morning of the day of election, at which the claim of enrolment was made.

JOHN MACADAM, in 1789, obtained a disposition in liferent of the superiority of lands affording a freehold qualification in Ayrshire, upon which he was soon after infeft; but he did not claim to be enrolled till 17th June 1796, at the meeting for electing the Member for the county, when, besides the former titles, he produced to the meeting a disposition of the fee of the superiority, dated that day, and bearing to have been granted for an onerous cause.

The meeting, after putting a number of questions to him, rejected his claim.

In a petition and complaint, in which James Home, who made the objection in the court of freeholders, was cited as a defender, the points at issue came to be, 1*mo*, Whether the disposition to the liferent was nominal and fictitious? and, 2*do*, Supposing that question determined in the affirmative, Whether the disposition to the fee gave the complainer a right to vote at the meeting?

On the *second* point, the defender contended, that a disposition obtained in such circumstances, and upon which the claimant was not infeft, did not remove the objection of nominal and fictitious; March 1791, Cases of Cheap and Ferrier.——*See* APPENDIX.

Answered; A person claiming enrolment, must not only hold an estate giving a qualification, but he must produce the titles feudally vesting it in him to the freeholders. By the act 1681, c. 21. it did not signify how recently the right had been obtained; but, by 12th Anne, c. 6, and 16th Geo. II. c. 11, it was made necessary that the titles produced should be completed a year before the claim of enrolment is made. These statutes, however, make no alteration on the former law as to the nature of the claimant's right to the estate to which

the titles relate. Wherever, therefore, the objection appears *ex facie* of the titles, any deed to remove it must be dated a year before it is produced; Dundas against Craig, No 166. p. 8788.; Grant against Hay, No 168. p. 8791. But where the qualification, as in this case, is *ex facie* unexceptionable, and the objection goes to the claimant's being *bona fide* in right to the estate, it may be removed at any period before the claim is made; Colquhoun against Urquhart, No 132. p. 8750.; Dunbar against Urquhart, 23d February 1774, *infra h. t.*; 7th March 1781, Russel against Ferguson, *infra h. t.*; 20th February 1787, Macdowall against Crawford, No 148 p. 8767. No 155.

Upon advising the petition, with answers and replies, the propriety of the decision in the cases of Cheap and Ferrier was doubted; and upon the grounds stated for the complainer, the LORDS sustained the vote *.

Act. *Tait*, et alii. Alt. *Geo. Fergusson*, et alii. Clerk, *Sinclair*.

D. D. *Fac. Col. No 17. p. 40.*

SECT. IV.

Trust Oath.

1768. *November* 19. FRASER of Culduthil *against* Sir JOHN GORDON.

No 156.
The trust-oath could not be put before the meeting of freeholders was constituted by the election of preses and clerk.

FRASER of Culduthil stood on the roll of Cromarty, in virtue of a decreet of division pronounced by the Commissioners of Supply in 1765; but before the election in 1768, this decree of division was set aside by the Court of Session, whereby Mr Fraser's qualification was reduced below L. 400. Notwithstanding of this, however, when the day of election came, no order had been obtained for striking him off the roll. It appeared, that if Mr Fraser was allowed his vote in the choice of preses and clerk, it would be decisive of the election; whereupon Sir John Gordon, the Commissioner last elected, before the vote for those officers, tendered to Mr Fraser the trust-oath, in the blank of which he had filled up Mr Fraser's lands, according to their old description, as standing valued at upwards of L. 400. Mr Fraser refused to take the oath in these terms, whereupon Sir John struck his name off the roll, and proceeded to call the votes of all the rest. Mr Fraser having prosecuted Sir John Gordon for L. 600, on account of this conduct, the LORDS found it was highly irregular to put the trust-oath in any shape before the choice of preses and clerk, and

* The Court at the same time determined, on the same principle, a case, Colonel Fullarton against John Anderson, in which the disposition to the fee was dated a few days, and the infeftment recorded the day before the election.——*See* APPENDIX.