

No 119.

In regard to the fact, that since the Union, the eldest sons of British Peers have been upon the roll of freeholders, and been elected Representatives for Scotland in the British House of Commons, the freeholders maintained, that a few instances of this sort proved only the fact that they did sit, without establishing their right of sitting. The objection in these cases happened not to be brought forward; but it might as well be argued, that persons under age are entitled to sit as Members in the House of Commons, because instances can be produced of minors who have been allowed to hold their seats without being questioned.

The Court, by a great majority, found, That the freeholders did wrong in refusing to enrol the Honourable George Abercromby, and ordered him to be put upon the roll of freeholders.

It was conceived by one or two of the Judges, that the disqualification expressed in the articles of Union, should be interpreted as applying not merely to the eldest sons of the Scottish Peers, as they then stood, but as comprehending all those who might afterwards attain to the same *status*; and that there was no substantial difference between a British Peer created now, and a Scottish Peer before the Union, during that period in which his eldest son was excluded. But the great majority of the Court seemed to hold, that this ineligibility in the eldest sons of Scottish Peers was a disqualification peculiar to their order, and being unfavourable in its nature, was not to be extended by implication to any other description of persons, than those who were expressly excluded by the constitution of the Scottish Parliament.

For the Complainer, Lord Advocate *Hope*, Solicitor-General *Blair, Bruce, Boyle*.
Agent, *Alex. Abercromby, W. S.* For the Respondent, *Erskine, Campbell*.
Agent, *R. Hill, W. S.* Clerk, *Home*.

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Fac. Coll. No 36. p. 73.

No 120.

The county collector of the window-duties and of the income-tax, not disqualified from voting at elections.

1803. February 11. HERON against MAXWELL.

PATRICK HERON of Heron having, as Parliamentary preses at the meeting of freeholders for choosing the Member for the stewartry of Kirkcudbright, called the roll for the choice of preses and clerk, declined to count the vote of Mr Maxwell of Barncleugh, as being disqualified, by the act 22d Geo. III. c. 41, because he was collector and assessor of the house and window duties for Dumfries-shire, and had also been collector of the income-tax for the same county, within twelve months preceding the election.

Against this proceeding Maxwell complained.

The Court were unanimous in considering the purpose of the disqualifying act to be solely to prevent the patronage of Government from influencing elections, consequently that its principle and provisions relate exclusively to those

holding appointments immediately from Government, and paid from the public treasury; Luder's Reports, vol. 2. p. 541.—552; Wight, p. 278.

Mr Maxwell had, for a considerable number of years, by the appointment of the Commissioners of Supply, or for assessing the land-tax, held the office of their collector. The same Commissioners were, by 20th Geo. II. c. 3, and the subsequent acts, appointed to levy the window duties, and the income-tax, with power to name their collector. From them he held this additional office, receiving a proportion of the sums collected as his only recompence.

For Maxwell, *H. Erskine, Fergusson, W. Erskine, Campbell jun.* Agent, *A. Young, W. S.*
For Heron, *Solicitor-General Blair, Hay, Cathcart.* Agent, *And. Macowbinnie.*
Clerk, *Menzies.*

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Fac. Col. No 85. p. 187.

1803. February 11.

STEWART against GORDON.

AT the meeting for electing a Member of Parliament for the stewartry of Kirkcudbright, John Gordon of Lochdougan applied to be enrolled as a freeholder; to whom it was *objected*, That he was not possessed of the whole lands on which he claimed, as retoured prior to 1681 to a ten-pound land of old extent, having sold a part of them to Thomas Maclellan of Greenlane about two years ago for the price of L. 58.

The objection being repelled by the court of freeholders, the Honourable Montgomery Stewart complained, and

Pleaded; By § 8. of 16th Geo. II. c. 11, it is declared, that no person is or shall be entitled to vote, or to be enrolled, in respect of the old extent, unless such old extent is proved by a retour of the lands of a date prior to 16th day of February 1681; and that no division of the old extent made since the aforesaid 16th day of February 1681, or to be made in time coming, by retour or any other way, is or shall be sustained as sufficient evidence of the old extent. So that if a part of an estate retoured of old extent has been alienated by sale or otherwise, whether this part be large or small, it is impossible that the old extent either of the one part or of the other can be improved by a retour prior to 1681. The lands having a *cumulo* extent, when a part is alienated, the old extent is divided, and the part which is retained cannot possibly have the old extent of the whole, but only that part which may be ascertained to belong to it on a division: but, by the statute, no division since 1681 can be evidence of the old extent in a question of qualification, however great the proportion may be in which the one part exceeds the other, nor however great the original retour may be. The claimant must literally be in possession of the whole lands that were retoured *in cumulo* by the retour claimed on, and consequently he must have right to the whole *cumulo* extent. It is not enough, though it were

No 120.

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A retour prior to 1681, of a ten pound land, affords a freehold qualification, although a small part of it has been disposed of for a price for the purpose of straightening marches.