

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 b. t.*; 7th March 1781, Russel against Ferguson, *infra b. 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.

S E C T. IV.

Trust Oath.

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

FRASER of Culduthil stood on the roll of Cromarty, in virtue of a decret 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

No 156.

The trust-oath could not be put before the meeting of freeholders was constituted by the election of preses and clerk.

* 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 infestment recorded the day before the election.—See APPENDIX.

No 156. found Sir John Gordon liable in a penalty of L. 300 on that account. See APPENDIX.

Fol. Dic. v. 3. p. 422.

1773. February 24.

Sir LUDOVICK GRANT of Grant, Bart. and Others, *against* ARCHIBALD DUFF
Sheriff-clerk of the County of Elgin.

No 157.
Found as
above.

A COMPLAINT was presented by Sir Ludovick Grant, and certain other freeholders, who attended at the last Michaelmas meeting of freeholders for the county of Elgin, which was held the 2d October 1772, charging, that Archibald Duff, acting in the character of Sheriff-clerk of said county, had been guilty of the offence enacted by the 16th of his late Majesty in the instances therein set forth, and, of consequence, had incurred the statutory penalty.

The point on which the merits of the complaint chiefly turned was, whether the trust oath could be legally tendered, (as in fact it was, and refused to be taken, at this meeting), before the choice of the preses and clerk; as, if not, Mr Duff's conduct deserved no blame. In which view, he argued, that the penult clause in the act 7th of the late King, founded on in the complaint, could not be meant to include the case of the trust-oath, which is regulated by a preceding clause of the same statute; and that the oaths spoke of in the penult clause are those appointed by law to be taken by electors in general, including delegates of burghs; which are, the oaths to government, but not the trust-oath, which respects alone the qualification of freeholders.

The judgment which Court gave upon this complaint imported, that the trust-oath was, in this case, legally tendered before the choice of preses and clerk; and that so stood the law. But this judgment was reversed in the House of Lords, March 31st 1773.

Act. *Dean of Faculty, Sol. General.* Alt. *Ilay Campbell.* Clerk, *Pringle.*

Fol. Dic. v. 3. p. 421. Fac. Col. No 62. p. 152.

1780. December 9. GEORGE FERGUSON *against* MUNGO CAMPBELL.

No 158.

A person having withdrawn from the court of freeholders, after it was proposed to put the trust-oath to him, the Lords

AT the meeting in 1780, for election of a representative to serve in Parliament for the county of Ayr, Mr Fergusson, a freeholder standing upon the roll, moved, 'That Mr Campbell should take the oath of trust and possession; and required the said Mr Campbell, whom he saw in court, to take the same;' whereupon Mr Campbell withdrew, and Mr Fergusson further moved, 'That, in terms of the act of Parliament, (7th Geo. II. c. 16.) he should forthwith be struck off the roll.'