

rits of the claims at their next Michaelmas meeting. THE COURT repelled the answers, and ordered the claimants to be enrolled, and refused a petition for the respondents, offering still to enter into their objections to the titles of the claimants.—See APPENDIX.

No 244.

Fol. Dic. v. 3. p. 433.

* * * The HOUSE of LORDS affirmed both judgments.

1768. February 10. GORDON of Newhall *against* WILLIAM PULTENEY, Esq.

No 245.

WILLIAM PULTENEY being at Michaelmas 1766 admitted upon the roll of freeholders for the shire of Cromarty, Gordon of Newhall, previous to the Michaelmas meeting 1767, lodged with the Sheriff-clerk his objection why Mr Pulteney should not be continued on the roll, which was, that his circumstances were altered by a sale of the subject upon which his qualification depended. By Mr Pulteney's keeping out of the way, there was no opportunity to prove the objection by his oath; and as the objector had no other relevant proof ready, it carried to repel the objection as not instructed.

A summary complaint sustained, where an objection for striking a person off the roll had been repelled, though by the literal words of the statute it is allowed only in three cases; 1st, Where a person is refused, 2dly, Where he is struck off the roll; and 3dly, Where he is unjustly enrolled.

In a complaint to the Court of Session of this supposed wrong done by the freeholders, the Court was unanimous, that the freeholders had done no wrong. But then it was doubted, whether it was not competent to admit the objection to be proved in this Court. *Ratio dubitandi*, In questions of election, the Court of Session has no original jurisdiction, being only a Court of review or appeal; and, therefore, that if the court of freeholders have not been guilty of any wrong, the complaint ought to be dismissed. A distinction was urged, on the other hand, between refusing to sustain a man's title to be put upon the roll, and refusing to sustain an objection to his being continued upon the roll. In the former, if the evidence of the claimant's title be defective, the freeholders must reject his claim. A complaint of wrong to the Court of Session would be ill founded; nor would his offer to supply the defect be listened to, leaving him to apply to the next Michaelmas head-court. But, in the latter, where the objection is rejected for want of evidence, the Court is bound in equity to admit documents to be produced before them for proving the objection. There can be no other remedy where the sale by Mr Pulteney is not upon record. Mr Pulteney will keep out of the way to prevent expiscation by his oath; and a court of freeholders have no power to force production of any writings.

“THE COURT accordingly sustained themselves competent, and gave warrant for production of writings to prove the objection.”

This case deserves to be kept in remembrance, as an instance of supplying a defect in an act of Parliament, in order to complete the remedy intended by it. For my part, I thought the remedy too bold, because the complainer had a pro-

No 245. cess at common law for turning Mr Pulteney off the roll, though more tedious and perhaps more expensive. It is a rule, that equity never interposes where there is a remedy at common law.

Fol. Dic. v. 3. p. 433. Sel. Dec. No 260. p. 333.

1773. June 24.

Colonel CAMPBELL of Barbreck *against* MACNIEL of Kilmory and MACKONOGHIE of Ambriesbeg.

No 246.

COLONEL Campbell of Barbreck duly lodged a claim to be enrolled as a freeholder of the shire of Bute at Michaelmas 1772, when only two freeholders attending, they took no notice of the claim, as no person appeared on the claimant's behalf; and they had made up their minutes, which the preses was signing, when another freeholder appeared, and insisted, that they should take the claim under consideration. This they refused, upon pretence, that their business being over, the meeting was dissolved; but, upon a complaint, the Court ordered the claimant to be enrolled, and found the defenders liable in expenses.

Fol. Dic. v. 3. p. 433. Fac. Col.

* * * This case is No 227. p. 8849.

No 247.

1774. August 9.

STEWARTS *against* CAMPBELL of Shawfield.

CAMPBELL of Shawfield had been enrolled as apparent heir to his grandfather, a freeholder of the county of Lanark; and at the Michaelmas meeting in 1773, he, without lodging a new claim, moved that his title to stand upon the roll should be restricted to certain lands, which, from the proceedings of the Commissioners of Supply, appeared to be sufficient to constitute a freehold qualification. The freeholders having granted his request, a complaint was given in to the Court of Session against their judgment. THE COURT found the complaint incompetent.

Fol. Dic. v. 3. p. 433. Fac. Col.

* * * This case is No 209. p. 8834.