

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A person having withdrawn from the court of freeholders, after it was proposed to put the trust-oath to him, the Lords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

The answer made was, ' That Mr Fergusson's request cannot be complied with, because Mr Campbell has not refused to take the trust-oath. All the law requires is, that Mr Campbell take that oath before he proceed to vote; and, when he comes to vote, he, no doubt, will take the oath mentioned. But, till then, he is not bound to remain in court longer than he pleases; nor can he be struck off the roll till he actually refuse to swear.'

The meeting having, ' by a majority of voices, repelled the objection, and refused to strike the said Mungo Campbell off the roll,' Mr Fergusson protested, and afterwards brought the judgment of the freeholders under review, by petition and complaint.

At advising, the Court required Mr Campbell to say positively, whether or not he was present when the oath was tendered? Mr Campbell, by his counsel, admitted that he was present; and the COURT

Found, " That the respondent having wilfully absented himself, after the trust-oath was desired to be put, is to be held as refusing to take the oath;" and therefore granted warrant for expunging him, and found him liable in expenses.

Act. *Nairne.*Alt. *Wight, and J. Boswell.*Clerk, *Tait.**L.**Fol. Dic. v. 3. p. 421. Fac. Col. No 8. p. 16.*1784. *July 7.*BRODIE *against* URQUHART.

A PERSON, after voting for preses and clerk, went out of the court-room to an antichamber, where he waited till he heard his name called to give his vote for the Member to be elected, and instantly appearing, gave his vote. There being no opportunity previously to put the trust-oath, it was tendered to him immediately after giving his vote, when he refused it, as being out of time. The freeholders having sustained the vote, the LORDS found they had done wrong, and ordered the person's name to be expunged from the roll. See APPENDIX.

*Fol. Dic. v. 3. p. 421.*1790. *January.* FREEHOLDERS OF CAITHNESS *against* ROSE.

MR ROSE having voted in the choice of preses and clerk, and been chosen clerk himself, the trust-oath was put to him, but refused by him, on the ground, that being elected clerk, he had resolved not to vote in any question that should be agitated at the meeting. The freeholders refusing to strike him off the roll, the Court of Session reversed their judgment. See APPENDIX.

Fol. Dic. v. 3. p. 421.

No 158.
found this equivalent to a refusal to take the oath, and ordered him to be expunged from the roll.

No 159.

No 160.