

No 269.

1773. August 7. Lord ADAM GORDON *against* DUFF.

OBJECTED to a complaint against an improper enrolment, which had been lodged and moved by the Court two days before the four kalendar months required by act 16th Geo. II. that the order of Court, appointing it to be served, was not dated or signed till one day within the four months.—THE LORDS repelled the objection.

*Fol. Dic. v. 3. p. 437. Fac. Col.*

\* \* \* This case is No 68. p. 8656.

---

## DIVISION VII.

### Penalty for a False Return.

HOME CAMPBELL *against* SINCLAIR.

No 270.

By 7th Geo. II. cap. 16. § 1. it is provided, ' That if the clerk of any meeting of freeholders for the election of a Commissioner, shall wilfully return to the Sheriff any person other than him who shall be duly elected, or if any other person shall presume to act as clerk, and wilfully to return to the Sheriff any person as elected, who shall not be duly elected, the party so offending shall forfeit L. 500; and every Sheriff who shall wilfully annex to the writ any false or undue return, shall forfeit the like sum of L. 500 to the person entitled to be returned.' Previous to the calling of the roll for Preses and clerk at the meeting for election in Berwickshire, *anno* 1741, protests were taken by Sir John Sinclair, one of the candidates, against eleven of the freeholders of the opposite party; and like protests were taken against fifteen of Sir John Sinclair's friends, by a gentleman in the interest of the Honourable Alexander Hume Campbell; who, as Commissioner last elected, having called the roll as it stood, being sixty-six in number, there appeared to be a majority of four for the Preses and clerk supported by him. Upon this a separation happened, and each party having adjusted the roll, and elected a Member, Mr Hume Campbell presented a complaint against Sir John Sinclair, who had acted as Clerk upon the side of the minority. *Answered* for Sir John Sinclair, He considered himself as duly elected clerk, of consequence he did not wilfully, but, *bona fide*, return to the Sheriff a person other than him who was duly elected. THE COURT OF SESSION sustained

the defence ; but the HOUSE OF LORDS reversed the decree, and found the penalty incurred. *Nota*, The Sheriff-depute annexed to the writ, not only the return of the election by the majority, but likewise that presented by Sir John Sinclair, for which he was ordered to be taken into the custody of the serjeant at arms. Commons Journ. March 19. 1741.

No 270.

These penalties are altered and amended by 16th Geo. II. cap. 11. by which it is statuted, ‘ That if any person presume to act as Preses or Clerk ,who is not ‘ chosen by the majority of freeholders present standing on the roll, he shall, ‘ for every such offence, forfeit the sum of L. 200 Sterling to the candidate who ‘ shall be chosen by the majority.’ § 14. ‘ And if the clerk (chosen by the ‘ majority), shall refuse or neglect to return the person elected by the majority ‘ of the freeholders on the roll, or shall return any other person, he shall forfeit ‘ the sum of L. 500 to the candidate chosen by the majority.’ § 16. ‘ And if ‘ the Sheriff shall neglect, or refuse to annex to the writ such return (made by ‘ the clerk duly elected), or if he shall annex to the writ the return made by ‘ any other person pretending to be clerk to the election, he shall, for every ‘ such offence, forfeit L. 500 Sterling to the person returned by the clerk, and ‘ chosen by the majority.’ See Nov. 19. 1768, Sir John Gordon *contra* Rose of Kilravock in the Appendix.

*Fol. Dic. v. 3. p. 438.*

*See* BURGH ROYAL.

*See* SUMMARY APPLICATION.

*See* APPENDIX.