1753. *December* 20. M'KENZIE of Highfield *against* SIR JOHN GORDON of Invergordon, &c.

[Elch. No. 60, *M. P.*; Kilk., *eodem die.*]

UPON the roll of freeholders for the county of Cromarty there stand only five gentlemen, viz. Sir John Gordon, Mr Charles Hamilton Gordon, Adam Gordon, Leonard Urquhart, and Roderick M'Leod of Cadboll; and a sixth gentleman, viz. the said Highfield, gave in his claim to be enrolled, in terms of the Act of the 16th of the King, and at the same time he and Cadboll lodged objections against three of the five standing upon the roll.

Upon the 16th day of October all the above named gentlemen standing upon the roll, except Cadboll, came to the town of Cromarty, but did not think proper to hold any meeting, neither upon that nor any day that year, upon pretence that the sheriff of the county, the late Lord Cromarty, had not, in terms of the said Act of the 16th of the King, regularly named the day for the meeting of the freeholders, though it was true in fact that the freeholders did in the year 1743 meet upon the 16th of October, but without the proper intimation that the law requires, since which time they had held no meeting. A summary complaint upon the statute was brought against the said gentlemen at the instance of Highfield and Cadboll, craving that Highfield should be admitted and the three gentlemen objected to expunged, in respect that their not meeting upon the 16th of October was a plain fraud intended to deprive the complainers of the benefit of the law; and therefore the Lords ought to give them that justice which the persons complained of had denied them.

CRAIGIE for the DEFENDERS, said, That as the law stood at present there was no compulsitor upon the freeholders to meet at all at Michaelmas: it was true, that by the Act 1681, they were appointed and ordained to meet at Michaelmas, but by a clause in the Act of the 12th of the Queen, all power of enrolment seemed to be taken from these meetings, so that after this act it was exceeding doubtful whether they had any title at all to meet and make up rolls; that the Act of the 16th of the King removed this doubt, and gave the freeholders a power of meeting and making enrolments at Michaelmas, but did not oblige them so to do, so that the case that has happened is plainly a case not provided for by the law; for by no law at present known can the freeholders be obliged to meet; and if so, it is impossible that the Lords of Session can either punish them for not meeting, or do their work for them by enrolling or striking off the roll; for this would be assuming an original jurisdiction which the court has not, but only a secondary jurisdiction or power of review; and much less can the Lords do this, upon a summary complaint founded on the statute, with which this case has nothing to do.

The Lords dismissed the complaint. Lord Elchies said, that before the tenure Act the vassals of the crown were obliged by their charters to meet annually at the Michaelmas head-court and two other head-courts, where the sheriff presided, and, of old, judged and tried causes with their assistance as assessors, and if they did not attend by themselves or their procurators, they

were liable to be fined; but the meeting of freeholders for enrolment or election, appointed by the Act 1681, was quite of a different nature, being intended for a different purpose, and a meeting where the sheriff had nothing to do; that whatever compulsitor there was upon the freeholders, by Act 1681, to attend this meeting, there was certainly none by the last statute, at least none that was actionable before this court.

Lord Kaimes was of opinion that the court had no jurisdiction at all in the matter, neither by summary complaint nor ordinary action; and he seemed to think that the complainers in this case could not have brought a declarator in common form, to have it found that they had a right and title to be enrolled and vote as freeholders; for he said there were some things in which the Court, by its nature and constitution, had no jurisdiction, such as questions of precedence among peers, rights to peerages, privilege to bear arms, &c.; and among these he reckoned the privilege of choosing or being chosen a member of the House of Commons, unless so far as power was given to the Court by particular statute; but this was a point the Court had no occasion to decide.

COMPLAINT FROM STIRLINGSHIRE.

1754. *January* 4. Captain Campbell *against* Haldane.

[Elch. *M. P.* No. 61, 62, 63; and *Fac. Coll.* No. 96 and 105.]

A freeholder in this county having purchased lands, took from the seller a disposition in common form, with procuratory of resignation and precept of seasine, upon which precept he took infeftment: after this he executed the procuratory of resignation, and expede a charter from the crown, which charter also confirmed the base infeftment; and this charter with the seasine upon it, he mentions, in his claim to be enrolled, as his title. It was objected, that this charter could be no title for enrolment, because *ex facie* it was null and void, as bearing a confirmation of the prior base infeftment, which made it impossible for the procuratory to be executed, and rendered the charter of resignation void and null. This objection the freeholders sustained; but, upon a complaint, the Lords unanimously ordained him to be enrolled, because they thought that a man having sundry titles to lands might claim upon any of them, and the freeholders could not set up one of his titles against the other, nor make his right hand fight against his left.

Lord Elchies said, that as the precept was to infeftment holding either *a me* or *de me*, the seasine taken upon that precept would apply to either manner of holding; and supposing it to be a seasine *de me*, the confirmation of it was very consistable with the charter of resignation.