

and that the other circumstances of the case did not establish the existence of any latent or implied trust in Mr Lindsay,

No 149.

THE LORDS found, That the freeholders had done wrong in refusing to admit Mr Lindsay to the roll.

For the Complainer, *Dean of Faculty, Macleod Bannatyne.* Alt. *Blair, Geo. Fergusson.*
Clerk, *Orme.*

G.

*Fac. Col. No 20. p. 34.*1789. *March 6.*

SIR WILLIAM FORBES, Bart. and Others, *against* SIR JOHN MACPHERSON, Bart.

SIR JOHN MACPHERSON, as liferent superior of certain lands of the requisite valuation, was enrolled as a freeholder in the county of Aberdeen.

Of this enrolment Sir William Forbes, and several other freeholders in the same county, complained to the Court of Session, in terms of the election statutes, contending, That the rights on which Sir John Macpherson's claim was founded, were nominal and fictitious.

In order to shew that this was really the case, the complainers required Sir John to confess or deny,

1mo, Whether the conveyance of the lands contained in Sir John's titles was not made out without his previous consent or knowledge? At least, whether Sir John was not solicited by the Duke of Gordon, from whom he derived his right, to accept of a freehold qualification?

2do, Whether the expense of making out the title-deeds was not paid by his Grace?

3tio, Whether those title-deeds were delivered to Sir John before his enrolment? or whether they were in his possession at any time previous to this period?

4to, Whether, when he was informed of the conveyance, he thought himself called upon to defray the expense of defending his title in the Court of Session, or elsewhere?

5to, Whether he did not, when he accepted of this conveyance, and does not still, consider himself as in honour bound to vote for the candidate who may be patronised by the Duke of Gordon, and to renounce his freehold qualification at his Grace's pleasure?

In the answers given in for Sir John, it was maintained, That the particulars mentioned by the complainers could not be proved in the manner here proposed.

In deciding this matter, two votes were put; *1st*, Whether it was competent to examine Sir John on the proposed interrogatories? And, *2dly*, Whether, on account of the small value of the liferent estate in a pecuniary view, as appear-

No 150.

In order to discover whether a qualification was nominal and fictitious, a number of particular interrogatories were proposed. The Court of Session found it incompetent to put them; but the judgment was reversed in the House of Lords.

No 150. ing from the face of the right itself, the freehold qualification was to be considered as nominal and fictitious? Both these questions were determined in the negative by a small majority. Accordingly

“THE LORDS found it incompetent to put the questions to the respondent proposed by the complainers, and repelled the objection, of nominal and fictitious, to the respondent’s qualification; and therefore dismissed the complaint.”

For the Complainers, *Wight*, et alii.
Clerk, *Gordon*.

Alt. *Tait*, et alii.

C. *Fol. Dic. v. 3. p. 419. Fac. Col. No 67. p. 121.*

* * * This case was appealed :

THE HOUSE OF LORDS, 9th April 1790, “ORDERED, That the interlocutors complained of be reversed; and it farther ORDERED, That the respondent do confess or deny the averments in the appellants’ pleadings.”

1790. *June 15.*

SIR WILLIAM FORBES, Bart. and Others, *against* WILLIAM TAIT,
JOHN GORDON, and Others.

No 151.

Trust oath of
7th Geo. II.
not the only
criterion of
nominality,
but particu-
lar interroga-
tories may
be put.

THE question between Sir William Forbes and others, freeholders in the county of Aberdeen, and Sir John Macpherson*, having been carried by appeal to the House of Lords, the judgment of the Court of Session was reversed, and Sir John Macpherson, the respondent, ordered to confess or deny the averments in the appellants’ pleadings respecting the nature of his freehold qualification.

Before this determination was given, Sir John Macpherson had gone abroad. But Mr Tait, Mr Gordon, and several other gentlemen, whose qualifications in the same county stood in similar circumstances, were required to answer the questions which had been proposed to Sir John.

These gentlemen gave in answers, the particulars of which it is unnecessary to state. What seemed to be decisive, was their admitting that the freehold qualifications had been framed with a view of increasing the political influence of the Duke of Gordon; that although the persons to whom they were granted, had come under no express engagement to vote for the candidate patronised by his Grace, they did not think themselves at liberty, as men of honour, to vote in opposition to his wishes; and that they could not with propriety refuse to re-

* 6th March 1789, No 150, *supra*.