

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*.

announce their freehold qualifications, when it was necessary for the Duke's accommodation. No 151.

THE LORDS unanimously found, that the freehold qualifications in question were nominal and fictitious, and appointed the names of the respondents to be expunged from the roll of freeholders.

Dean of Faculty, Wight, C. Hay, et alii. Alt. Tait, Gordon, et alii. Clerk, Gordon.
C. *Fol. Dic. v. 3. p. 420. Fac. Col. No 139. p. 275.*

IN some other cases from the same county, the persons whose freehold qualifications were brought under challenge, gave in no answers to the questions put to them. THE COURT, considering their silence as an acknowledgment of the particulars they were required to confess or deny, appointed them to be struck off the roll.

1790. December 8.

MARK PRINGLE *against* FREEHOLDERS OF ROXBURGHSHIRE.

By act 16th Geo. II. relative to the election of Members of Parliament, it is declared, that if no complaint against the title of any person enrolled as a freeholder be exhibited to the Court of Session ' within four kalendar months after ' enrolment, the freeholder enrolled shall stand and continue upon the roll, until an alteration of his circumstances be allowed by the freeholders, at a subsequent Michaelmas meeting or meeting for election, as a sufficient cause for ' striking or leaving him out of the roll."

It still, however, continued competent to put to every freeholder the oath of trust and possession, introduced by act 7th Geo. II. at any time before he proceeded to vote in the election of a Member of Parliament, or in adjusting the rolls.

In the case of the Freeholders of Forfarshire, No 141. p. 8753, the Court found, that in order to ascertain whether or not the qualifications of freeholders were nominal and fictitious, they should be likewise obliged to answer special interrogatories on the subject. But, upon an appeal, the House of Lords reversed that judgment, finding that the Court had no power to enter into such an investigation.

This was afterwards held to be the rule, down to the date of the decision in the case of Sir John Macpherson *. That judgment, however, being brought under the review of the House of Peers, it was then found, that the trust-oath was not the only means of investigating the merits of the objection of nominal and fictitious, but that it was competent to do so *prout de jure*; and in particular, by calling on the party to answer pertinent interrogatories.

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

No 152.
Other means than the trust-oath, for ascertaining the objection of nominal and fictitious, precluded by the lapse of four months after enrolment.