

1762. M'KAY of Strathie, and Others, *against* JOHN RIDDOCH, and Others.

No 203.

THERE is no number of freeholders required by law to make a quorum; and where a single freeholder had attended by himself, and gone through the business, the LORDS dismissed the complaint of another freeholder, objecting to the legality of the court, in respect it was held by a single person. They also found, that the Sheriff clerk had incurred the statutory penalty, by refusing to call the roll made up at that court. See APPENDIX.

*Fol. Dic. v. 3. p. 428.*

SIR JAMES STEWART *against* ———.

No 204.

By 16th George II. cap. 11, § 13, it is enacted, ' That if the Commissioner last elected, or, in his absence, the Sheriff or Steward's clerk, shall, in the choice of preses or clerk, receive the vote of any person who does not stand upon the said roll, (the roll last made up), he shall for every such offence forfeit the sum of L. 300 Sterling to every candidate for the office of preses or clerk respectively, for whom such person shall not have given his vote; and for refusing the vote of any person whose name is upon the roll, he shall for every such offence forfeit the like sum of L. 300 Sterling to the person whose name shall not be called for, or whose vote shall be refused.' But this is to be understood *sanso sensu*, as not extending to persons legally disqualified, or otherwise clearly not entitled. Thus at a meeting for election for Mid-Lothian, in 1744, the name of Sir John Stewart appeared upon the roll 1742, being the roll last made up. The present Sir James Stewart claimed a vote for preses and clerk; but the Commissioner last elected being satisfied that the name in the roll did not apply to him, but to his father, who had been omitted to be struck off at his death, refused to admit him. Sir James preferred a complaint upon the statute, insisting for the penalty; but the complaint was refused. See APPENDIX.

*Fol. Dic. v. 3. p. 428.*

\*\*\* See Fraser against Gordon, No 156. p. 8777.