

No 142. not only marked out the circumstances by which the legal qualifications might be distinguished from those of a different description, but also established one mode of trial, by which those circumstances might be discovered in the court of freeholders, without, however, limiting the judicatories in which the question might afterwards be discussed from resorting to others equally satisfactory. It would have been a most impolitic regulation, to put it into the power of every one possessed of an illicit qualification, by taking the oath at the requisition of a person in the same interest, to place his conduct beyond the reach of challenge. It would also be contrary to the general principles of the law of Scotland, in which fraud may be proved by every sort of evidence which the circumstances of the case afford. From the former decisions it was farther said, no proper precedent could arise. It was the nature of fraud to assume various colours and disguises; and it could not with any reason be thought, that because in one or more instances the detection had appeared to be incomplete, no attempt of the same kind was ever afterwards to be permitted.

Others of the Judges, concurring in the same opinion as to the illegality of such qualifications as the present, considered them to be contrary to the statute of 1681; and that, as it was then meant to annex this valuable right to landed property, and to give only one vote to each proprietor, so every contrivance framed to evade this purpose was a fraud against the law, and of course illegal and inept. If those unreal qualifications which were now in use had existed in 1681, it could not be imagined that the statute would have been silent on that head. It therefore could not be deemed an improper exercise of authority, in Judges directed, not merely by the words, but also by the meaning of the Legislature, to give that effect to this statute which was necessary for maintaining the rights of election on a proper footing.

The judgment of the Court was in these words:

“THE LORDS having considered the petition and complaint, with the answers thereto, and having heard parties procurators in their own presence, and having advised the memorials *hinc inde*, they find, That the respondent's qualification is nominal and fictitious, and sustain the objection to his enrolment: Find, That the freeholders did wrong in admitting him to the roll; and ordain his name to be expunged.” See No 40. p. 8625.

For the Complainer, *Lord Advocate, Blair, Geo. Fergusson, Honyman.*

For the Respondent, *Dean of Faculty, Wight, Maclaurin.* Clerk, *Robertson.*

C.

*Fol. Dic. v. 3. p. 418. Fac. Col. No 313. p. 482.*

1787. February 20.

JOHN CAMPBELL and ARCHIBALD TOD *against* The Honourable  
WILLIAM ELPHINSTONE.

No 143.

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MR ELPHINSTONE was admitted to the roll of freeholders in the county of Renfrew, at the meeting for election in 1786.

His titles, derived from Mr Shaw Stewart, proprietor of the estate of Greenock, who was fettered by an entail of the strictest sort, imported a bare liferent of superiority, the pecuniary advantages of which were nowise adequate to the expense of making out the necessary writings.

A majority of the Judges were of opinion, That the qualification grounded on these titles was nominal and fictitious. A conveyance from the proprietor of an entailed estate, it was observed, might, in some instances, afford an unexceptionable right to vote. But in distinguishing real qualifications from such as were nominal and fictitious, the circumstance of the person from whom the right was obtained being under restraints of this sort, had a considerable weight, as it could hardly be doubted, that the grantee was at least under an implied obligation to reconvey his right whenever this became necessary to prevent a forfeiture; and when to this was joined the presumption arising from the limited nature of the right itself, it was impossible to consider it as one to which the Legislature meant to annex a right of voting.

THE LORDS found, "That Mr Elphinstone's qualification was nominal and fictitious, and that the freeholders did wrong in admitting him to the roll."

Act. *Lord Advocate*, et alii. Alt. *Dean of Faculty*, et alii. Clerk, *Robertson*.  
C. *Fol. Dic. v. 3. p. 419. Fac. Col. No 315. p. 489.*

\*.\* This case was appealed:

THE HOUSE OF LORDS, 30th April 1787, ORDERED, "That the cause be remitted back to the Court of Session in Scotland, to hear parties farther thereupon, with liberty to receive such new allegations and evidence as the occasion may require."

1787. February 20. JOHN CAMPBELL and Others *against* WILLIAM INGRAM.

THE right in virtue of which Mr Ingram was admitted to the roll of freeholders in the county of Renfrew, was a naked liferent of superiority, created only a few years before. The feu-duty did not exceed ten shillings, and the casualties were taxed at double the feu-duty.

THE LORDS, on a complaint, preferred in the name of John Campbell, and others, "found, That the freeholders did wrong in admitting Mr Ingram to the roll, and ordered his name to be expunged."

Act. *Geo. Fergusson*, et alii. Alt. *Dean of Faculty*, et alii. Clerk, *Robertson*.  
C. *Fol. Dic. v. 3. p. 419. Fac. Col. No 316. p. 490.*

No 143.  
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of an estate,  
fettered by a  
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