

be remitted back to the Court of Session to pass the bill of suspension.

1792.

ELLIOT
v.
PRINGLE.

For Appellant, *T. Erskine, W. Adam.*

For Respondents, *Sir John Scott, W. Grant.*

WM. ELLIOT of Wells, Esq., one of the Free-} *Appellant ;*
holders of the County of Roxburgh,
COLONEL ROBERT PRINGLE, *Respondent.*

House of Lords, 5th March 1792.

ELECTION OF MEMBER OF PARLIAMENT—QUALIFICATION.—Held, where objection is stated to the title to be enrolled and to vote for a member of Parliament, the complaint must be followed up within four months, in terms of the act 16 Geo. II. c. 11.

The respondent was enrolled as a freeholder of the county of Roxburgh, in virtue of a conveyance to him for life of the lands of Bankhead, disposed to him by John Pringle of Clifton. The property was a part of the estate held by John Pringle under strict entail, and with strict prohibitions, &c. against alienation.

When he applied to be enrolled, it was well known, from Pringle having no power to alienate, that this qualification was fictitious, but no objection was taken at the time.

Thereafter, at a meeting of freeholders, for the purpose of electing a commissioner to serve in parliament, the appellant objected to the respondent's title as nominal and fictitious, and moved that he should take the oath, but previously that he should answer certain interrogatories, the tendency of which was to prove, by the respondent's own confession, that the qualification was fictitious.

The respondent expressed his willingness to take the oath, but declined to answer the interrogatories, because he considered the freeholders had no right to put them. It was answered, as by the case of the Aberdeenshire freeholders and Macpherson, it was determined in the House of Lords that the freeholders had a right to investigate the reality of the qualification by other means than putting the oath, he was not entitled to refuse. Reply. He was entitled to refuse, because the four months within which, by the act 16 Geo. II. c. 11, the

1792. freeholders were entitled to complain to the Court of Session have expired. The question thus came to be, Whether the freeholders have a right to object and investigate the qualification of a person upon the roll, although no complaint be lodged against his enrolment within four months?

Dec. 8, 1790. The Lords found that the freeholders did wrong in striking the complainer off the roll; and, on reclaiming petition, —23, — they adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *S. Douglas, J. Anstruther.*

For Respondent, *W. Grant, Wm. Dundas.*

<p>WM. SIMSON, Esq. of Viewfield, The Honourable Mrs. HENRIETTA ANN KER, Sister of the deceased JANE, Mar- chioness of Lothian, DOUGALD STEWART, Professor of Moral Philosophy in the Uni- versity of Edinburgh, & JOHN PITCAIRN, Merchant there, Trustees appointed by the said deceased Marchioness of Lo- thian, and JOHN WM. MARQUIS OF LO- THIAN,</p>	}	<p><i>Appellant ;</i></p> <p><i>Respondents.</i></p>
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House of Lords, 28th March 1792.

SUPERIOR AND VASSAL—RETENTION OF FEU-DUTIES—DAMAGE IN WORKING COAL.—Held, in the special circumstances, that the superior was not liable for the damage sustained by his vassal, in working the coal by the proprietor, to whom the superior had conveyed the coal; but that the owner of the coal was alone liable, and therefore, that he had no right to retain the feu duties.

July 3, 1748. Lord Ross sold, and in feu farm conveyed, in consideration of the sum of £700, and the feu duty of £50, &c. per annum, the lands of Pendriech, with the mansion house thereon, situated in the parish of Lasswade, and county of