1761. *January* 14.

LAUCHLAN GRANT, Writer in Edinburgh, *against* ALEXANDER HAY, Younger of Cocklaw.

No 168.
A renunciation of a reserved faculty, to alter or innovate the fee, granted in favour of the fiar, must be recorded a year before he can be enrolled as a freeholder.

AT the Michaelmas meeting of the freeholders of the county of Aberdeen in 1760, Alexander Hay, eldest son of James Hay of Cocklaw, was enrolled upon production of the following titles; *1mo*, Charter of resignation in favour of his father in liferent, and of himself in fee, of the lands of Meikle Cocklaw, and others, containing a reserved power to the father to alter; *2do*, Instrument of sasine following upon the charter, dated 25th October, and registered 14th November 1757; *3tio*, Discharge and renunciation, by the father, of the reserved power, in so far as concerned certain parts of the lands contained in the charter, dated 29th September 1759; And, *4to*, An act of division of the Commissioners of Supply ascertaining these lands to amount to L. 444: 19: 8 Scots of valued rent.

Lauchlan Grant, a freeholder of the county, complained of this enrolment to the Court of Session, and *objected*, That the renunciation of the father's reserved power had not been recorded a year before the Michaelmas meeting.

Answered for Alexander Hay, It is sufficient that the fee was disburdened of the reserved power, and rendered irredeemable a year before the enrolment; for although the act of the 16th of the late King requires, that the sasine be registered a year before enrolment, the recording a renunciation of a faculty is prescribed by no statute whatever; and as the above mentioned act is correctory of the former law, it ought not to be extended by interpretation. Nay, it does not even seem requisite, that every thing necessary to render a title quite complete should be done before the year commences. A purchaser from an apparent heir is entitled to be enrolled, if his own infeftment be recorded a year before, although the apparent heir's titles be not made up for some time thereafter. The law requires only that his own infeftment be recorded in due time; it does not require that another deed, though necessary, by way of reply to take off an objection, be so early executed.

Replied, It is a real feudal right alone that can give a freehold qualification; consequently, no personal right can be brought in to make good such qualification. Now, in the present case, the infeftment gave only a redeemable property. To render it irredeemable, a renunciation of the reserved power was absolutely necessary. But whatever effect a latent and personal renunciation may have against the granter, it must be recorded before it can be effectual against third parties. The irredeemable right of property, therefore, is not properly completed until the renunciation be recorded; and as the charter and infeftment, by which the original right is constituted, must appear upon record a year before enrolment; so it is equally necessary that the release or discharge of any burden affecting that right be registered at the same time. Nor is the

No 168. instance of a freehold purchased from an apparent heir, in the least analogous to the present case. If the purchaser has expede a charter under the Great Seal in his own favour, and has got his infeftment upon record a year before his enrolment, as he is thereby received the Crown's vassal, it is nothing to the freeholders although his title was derived from one that never had a vestige of a right to the lands. The claimant's own charter and infeftment are all that they are concerned with; where these concur, they must enrol, because the title is *ex facie* complete; and the law has not given them any power to investigate the progress of a claimant's titles.

'THE LORDS ordained Alexander Hay to be struck off the roll of freeholders.'

For the Complainers, *Ja. Douglas, Lockhart.* For the Respondent, *Ferguson, jun. Burnet.*

A. W. *Fol. Dic. v. 3. p. 423. Fac. Col. No 5. p. 8.*

1768. *January* 19.

GEORGE SKENE and CHARLES HUNTER *against* DAVID OGILVIE.

No 169.

IN the course of the contest between the Earls of Strathmore and Panmuir, for the county of Forfar, previous to the general election 1768, the Earl of Strathmore complained of fourteen different enrolments, in virtue of dispositions granted by the Earl of Panmuir.

It was *pleaded* against one of them, that of David Ogilvie, That the tenements of which his qualification was composed, lay discontiguous, and that infeftment had not been taken upon each tenement respectively, but upon one part of the whole.

Answered, There is a clause of union in the charter, with a disposition, declaring, that the infeftment taken *super aliqua parte fundi dict. terrarum sufficiens erit pro integris terris, baroniis supra scriptis, vel quavis earundem parte, non obstante quod discontigue jacent.*

Replied, That the concern being dissolved by the different dispositions, the effect of the disposition was at an end.

THE COURT of SESSION sustained the objection, but the HOUSE of LORDS, 4th March 1668, reversed the judgment.

Fol. Dic. v. 3. p. 424.

*** The same judgment had been given by the Court of Session in thirteen other cases; which was likewise reversed in the House of Lords.