

1760. *February 5.*CAMPBELL of Shawfield, and GRAHAM of Garthmore, *against* MUIR of Caldwell.

No 138.

FOUND, that titles, upon which a claim of enrolment is entered, cannot be rejected as nominal and fictitious, if the claimant be really possessed of the whole right contained in those titles, even where they have been made up in such a manner as to make it presumeable that the sole intention was to create a vote.

*Fol. Dic. v. 3. p. 418. Fac. Col.*

\* \* \* This case is No 8. p. 7783. *voce* JUS TERTII.

\* \* \* A similar decision was pronounced, 22d February 1760, Grant of Drumpad against Campbell, and other Freeholders of Dumbarton, No 129. p. 8740.

1761. *July 28.*STEWART *against* DALRYMPLE.

No 139.

THE LORDS repelled the objection of nominal and fictitious, where the feu-duty payable to the Crown was L. 24 Scots, and the blench duty payable to the claimant was one penny Scots, with relief of the feu-duty and other public burdens.

*Fol. Dic. v. 3. p. 403. Fac. Col.*

\* \* \* This case is No 18. p. 8579. *h. t.*

1762. *January 5.*ALEXANDER GOLDIE of Southwick *against* ALEXANDER GORDON, younger, of Campbelton.

No 140.

At the Michaelmas meeting of the freeholders of the stewartry of Kirkcudbright, held upon the 13th of October 1761, Alexander Gordon, younger, of Campbelton, claimed to be enrolled as proprietor of certain lands which had been disposed to him by his father.

Alexander Goldie, a freeholder, present at the meeting, *objected*, That the claimant's title was altogether nominal and fictitious, and that no true and real estate was devised to him by the disposition from his father, which, besides being limited to heirs only, expressly provided, ' That no debts contracted, or deeds done, or to be contracted and done, by the said Alexander

A charter proceeding upon a disposition, bearing, ' That no debts contracted, or deeds done, or to be contracted or done, by the disponee during the life of the dispon-

No 140.  
er, without  
his consent,  
should affect  
the lands dis-  
posed, or the  
rents thereof,  
found to be a  
sufficient title  
for enrolment.

' Gordon, during the life of his father, without his consent, should ever affect the said lands, or rents thereof.' A clause which plainly pointed out, that the claimant had no estate at all during the life of his father.

The claimant *answered*, That he was in the absolute and irredeemable possession of the lands: That the clause of restriction in the disposition could have no influence, as there was no express prohibition from selling, and no clause declaring any debts contracted by him to be null; and that it was common for heritors to be admitted upon the roll, who are fettered with the strictest entails.

Thereafter, the claimant took the oath of trust and possession; but Mr Goldie having still insisted, that it appeared *ex facie* of the titles produced, that no estate was vested in his person during the life of his father, the vote was put, and, by a plurality of voices, the claimant was admitted upon the roll.

Mr Goldie complained to the Court of Session upon the grounds above stated; and,

THE LORDS repelled the objection\*.

*Act. Copland.*

*Alt. Lockhart.*

*A. W.*

*Fol. Dic. v. 3. p. 423. Fac. Col. No 72. p. 162.*

1768. *March 9.*

SKENE, &c. *against* WALLACE.

I.

IN this and a multitude of other cases, the Court of Session introduced a practice of putting all freeholders, against whom complaints were depending, though upon different grounds, to answer the following or similar interrogatories: Whether they had accepted the liferent or wadset on which they claimed with any other motive than that of serving one of the candidates, or for any other purpose but that of creating a vote? Whether they had actually advanced any money for their disposition, or for making up their titles? Whether they ever had the title-deeds in their possession? And if they were at the expense of defending against the complaint? And upon the claimant's either refusing to answer, or answering negatively, an interlocutor was pronounced, finding that the estate on which he had been enrolled was not a real estate in his person, but that his title were nominal and fictitious, created or reserved in order to entitle him to vote at the ensuing election, and therefore ordering him to be struck off the roll. But the House of Lords (9th May 1790) disapproved of this practice, and reversed the judgments.—See APPENDIX.

*Fol. Dic. v. 3. p. 418.*

\* By mistake in the Faculty Collection, the objection is said to have been sustained.