

the statute in this case, is a new construction of the statute, and contrary to justice. By that rule, a man, plainly denuded of his estate by sale, if not struck off by the freeholders, cannot be struck off by this Court. As to the *second* objection; if Mr Bruce is not denuded of the lands, he is divested of the proof of his valuation. He now stands upon an infetment in lands undivided, which cannot entitle to a vote. If the Commissioners do their duty, the alteration ought to be made instantly upon the cess-books.

PRESIDENT. The *first* objection is not *new*; for it has been made and repelled in *Sir George Suttie's* case; in a case from Kinross-shire; and also in a case from Cromarty.

COALSTON. My doubt would have been, were it not for those decisions, how far a *casus improvisus* can be supplied by the Court, while there is a remedy by ordinary action?

MONBODDO. There are four ways by which freeholders may do wrong: 1st, By admitting. 2d, By refusing to admit. 3d, By striking off. 4th, By refusing to strike off. This last case is altogether omitted by the statute.

KENNET. There was a doubt as to this formerly; but the extension was not great. If the Court had had no jurisdiction at all in such case, there might have been more difficulty in supplying a clause by analogy. But that was not the case; for the Court had a jurisdiction in the way of ordinary action.

PRESIDENT. The argument was, the statute was beneficial. And the method of determination was convenient. It would be unjust to determine differently in this case from what we have determined formerly in other cases. For parties, trusting to those decisions, have brought summary complaints, and neglected to bring ordinary actions.

KAIMES. I am for extending beneficial statutes: so the Court has done in other cases for a century back. In this we do not go against the spirit of the law, but along with it.

On the 14th February 1771, "The Lords repelled the objection as to competency; found the complaint relevant and proven; and ordained Mr Bruce to be struck off the roll."

Act. W. Baillie. Alt. A. Crosbie.

1771. February 14. CAPTAIN BASIL HERON *against* JOHN SIME.

MEMBER OF PARLIAMENT.

Infetment taken in virtue of a clause of union and dispensation in a Crown-charter.

[*Faculty Collection, V. 219; Dictionary, 8684.*]

HAILES. Once I had the same doubts as the freeholders; but the judgment of the House of Lords, in the *Forfar* cases, has silenced, if not convinced me.

MONBODDO. I am both silenced and convinced.

PRESIDENT. I wish I was convinced, for then I should think we had done wrong, and the House of Lords right; whereas I still think the contrary: but that judgment shall be a rule to me in all election causes. If the same question occurs in a matter of civil right, I shall then deliver my opinion.

PITFOUR. In the question as to *General Burdens*, the House of Lords altered successive judgments of the Court of Session, and the Court of Session followed the rule laid down by the House of Lords. A judgment pronounced by the supreme court upon a neat point of law, must be followed: it makes law.

On the 4th February 1771, "the Lords, having considered the decision of the House of Lords in the *Forfar* cases, sustained the complaint, and ordered Captain Heron to be added to the roll."

Act. A. Fergusson. *All.* A. Lockhart.

1771. February 14. ALEXANDER COPLAND, of Colliestown, *against* JOHN BUSHBY.

MEMBER OF PARLIAMENT.

[*Faculty Collection, V. 221, No. 76, Note; Dictionary, 8686, (2d,) Note.*]

HAILES. This is the most critical of all objections. When there is a *page second* marked, a *page first* is virtually marked; for *primus est quem nemo præcedit*.

PRESIDENT. This is a good critical answer to a critical objection.

COALSTON. I think this is a better answer,—that the Act of Sederunt 1756 is erroneous: That act ought to be amended.

On the 14th February 1771, "the Lords repelled the objection, and ordered Colliestown to be added to the roll."

N.B. Colliestown craved to be restored to his former place on the roll; but this the Lords would not grant, as he claimed on new titles.
