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tion, for setting them aside. Sloan Laurie, one of the disponees, claimed to be enrolled at Michaelmas 1780, on the two merk-land of Horsecleugh and others; but to this claim, Campbell, who was himself a freeholder, *objected*, That the claimant's titles were null, as tending to create an undue multiplication of superiors on the vassal. The freeholders sustained the objection; but the LORDS found they did wrong, and ordered the claimant's name to be added to the roll.

Fol. Dic. v. 3. p. 428. Fac. Col.

* * * This case is No 9. p. 7786. *voce* JUS TERTII.

SECT. IX.

Alteration of Circumstances.

1771. February 14.

The HON. CHARLES HOPE WEIR *against* MR ALEXANDER BRUCE.

No 197.

Reduction of a decree of division of valuation, by which a freeholder's qualification was reduced below L. 400 Scots, found to be a sufficient ground for striking him of the roll, though he had been upwards of four months enrolled.

THE property lands of Bonnyton, in the county of Linlithgow, were valued *in cumulo* at L. 800 Scots. Mr Glen, the proprietor, obtained from the Commissioners of Supply a division of that valuation into two parts; one of which, valued at L. 402 : 9 : 7, he conveyed to Mr Alexander Bruce; the other, valued at L. 397 : 10 : 5, with another small subject to make up the full valuation of a freehold qualification, he conveyed to Dr Glen. In the course of stating objections to these qualifications, it appeared; that a pendicle of land called Cornilaws, which, in dividing the *cumulo* valuation, had been considered as part of the lands of Bonnyton, and as forming a part of Mr Bruce's qualification, was held burgage of the town of Linlithgow; so that the valuation of these two parts should have stood thus: Dr Glen's part, valued at L. 397 : 10 : 5, should have been L. 411 : 9 : 9, and Mr Bruce's, valued at L. 400 : 9 : 7, should have been only L. 388 : 10 : 3.

The objection to Mr Bruce, that he did not possess the valuation required by law, being stated, it was *answered*, That the objection did not appear from the decret of division, which was *ex facie* regular, and must be held to be just till set aside by a process of reduction. The Court was of opinion, that this objection was not competent in a summary complaint; and accordingly sustained Mr Bruce's qualification.

Thereafter, Mr Hope Weir brought a reduction of the decree of valuation; in which it was found, that Cornilaws was no part of the lands of Bonnyton, but a burgage tenement held of the town of Linlithgow; and the decree was accordingly reduced and declared to be null and void. Objections to Mr Bruce's

qualification being regularly lodged previous to Michaelmas 1769, stating, that there was such an alteration of his circumstances as authorised his being expunged from the roll, a majority of the freeholders voted, Not to expunge.

In a petition and complaint, Mr Hope Wier *contended*, that no person was entitled to stand upon the roll of freeholders, unless his lands were either a 40 shilling land, or were valued in the cess-books at L. 400 Scots, evidence also being produced of their being separately valued at that sum. If such freeholder should afterwards alienate any part of his qualification, or if his titles, apparently good at the time of enrolment, should be afterwards found not good, it was competent for any freeholder to object and have him expunged. Now, though freeholders were bound to regard decrees of division, *ex facie* regular, as legal evidence of a valuation, and thereon to admit a claimant, yet if, upon proper investigation, such decrees were found to be erroneous, the law was not so unjust as to leave the wrong without a remedy. It was accordingly competent for any freeholder, or any heritor paying cess in the county, to bring a reduction of such erroneous decree; and if he prevailed, any freeholder, upon giving in objections in proper form, was entitled to have such person expunged from the roll. This remedy was pointed out by the act 16th Geo. II. by which it was declared, that a freeholder, however long he may have stood on the roll unchallenged, might yet be struck off, "upon sufficient objections arising from the alteration of that right or title in respect of which he was enrolled." Applying this regulation to the present case, Mr Bruce could not have been enrolled unless he had instructed that his lands stood valued at L. 400; hence the decree of division was a necessary title for his enrolment; and as it was now reduced, there was a material alteration of his circumstances, his valuation being now less than L. 400.

Mr Bruce *answered*,

1mo, That the statute 16th Geo. II. did not authorise a complaint in a case of this nature. That statute gave redress, *1st*, When a claimant at a Michaelmas meeting was either wrongfully enrolled, or his claim rejected; *2d*, When an insufficient objection against a person who had formerly stood upon the roll was sustained. It no where authorised a complaint such as the present; but, on the contrary, considered the right acquired by one, who, without a complaint, had been four months upon the roll, to be absolute, and not to be overturned but by a judgment of the freeholders, allowing an alteration of his circumstances.

2do, As the respondent's title deeds stood in the same situation as when he was originally enrolled, there was no alteration of his circumstances. The evidence of the qualification upon which the freeholders had proceeded, was not the decree of division now said to be reduced, but a certificate under the hands of the clerk and two Commissioners of Supply, which was still unimpeached. And as the complainer had neither applied to the Commissioners of Supply for

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a new valuation, nor had inserted a declaratory conclusion in the action of reduction of the old valuation, he could not bring before the freeholders any legal evidence, that the respondent's lands were valued at a lower rate than L. 400.

THE LORDS were clear as to the merits of this case, that it was a complete alteration of circumstances; and the only doubt they entertained was of the competency; they were, however, in general of opinion, that the statute should be supported, though extended to a *casus improvisus*, which it was admitted the present was. They therefore "repelled the objection to the competency of the petition; find that the freeholders did wrong in continuing Mr Alexander Bruce upon the roll; and grant warrant to and ordain the sheriff-clerk of Linlithgow to expunge his name from the said roll."

For Hope Weir, *Lockhart, Baillie.*For Bruce, *Crosbie.*

R. H.

Fac. Col. No 75. p. 217.

1774. February 23.

CAPTAIN THOMAS DUNBAR of Grangehill, *against* CAPTAIN DUNCAN URQUHART of Burdsyards, and Others.

No 198.

On a freeholder's disposing his lands with procuratory and precept, it is sufficient to preserve his right, that in the procuratory, and likewise in a separate obligation, the disponent is taken bound not to execute the procuratory.

CAPTAIN DUNBAR's claim for enrolment, as a freeholder of the county of Elgin, was, by the meeting of freeholders assembled at Michaelmas 1773, rejected on the following grounds; *1st*, That, at Michaelmas preceding, while he stood on the roll, it having been objected to him, that he was denuded of his qualification, and he, when ordered to confess or deny the facts on which this objection was founded, having remained silent, was expunged from the roll; and, therefore, that it was not competent for him now to claim to be enrolled on the same titles; and, *2dly*, That, independently of that *res judicata*, the objection was still insurmountable, Captain Dunbar having actually granted a disposition of the lands on which he was enrolled, with procuratory and precept, in favour of another person.

In a complaint preferred to the Court, Captain Dunbar insisted, that neither of the grounds stated by the freeholders was sufficient to support their proceeding; and,

As to the *first, pleaded*; The doctrine of *res judicata*, arising from the establishment of regular courts, is not applicable to the determinations of freeholders at their Michaelmas meetings, who, except in one instance, are at liberty either to adopt or reject the resolutions of prior meetings. The single exception is that introduced by act 16th Geo. II. which declares, that a freeholder enrolled, and standing on the roll, not complained of, for four kalendar months, shall continue there till an alteration of his circumstances happen. But the enactment does not extend to the case of a claimant who has been kept