No 228.

and other objections; and as it was apprehended that the claimants would not rest satisfied with the judgment of the freeholders, and might object that the freeholders were incompetent to try the question, whether the sasines were properly registered or not, the pursuers brought a new action of declarator in this Court against the claimants, upon the acts of Parliament 1693 and 1696, with regard to the registration of satines, and with the same conclusions as before, at least in so far as respected the defenders being entitled to be enrolled as at Michaelmas 1773.

The Court, by an interlocutor, June 17. 1774, 'sustained the pursuers title to insist in this action, but superseded determining the merits of the cause, till the proof in the case of Cromarty was laid before them.' And thereafter, (July 8. 1774), upon advising mutual memorials, and abstract of the proof in the case of Cromarty, 'in respect of the practice, which has been proved, in that case, to have prevailed in many counties in Scotland, and of the great and general mischief that might insue, if the objections now pleaded were sustained, repelled the objection to the registration of the sasines in question, and assoilzied the defenders from the present action.' See APPENDIX.

Act. *Macqueen, Ilay Campbell, J. Boswell.* Alt. *Dean of Faculty.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 430. *Fac. Col. No* 124. *p.* 334.

1777. *June* 17. Sir ROBERT ABERCROMBY *against* ALEWOOD and Others.

No 229.

WHEN an objection is palpable, and can be established under his own or his author's hand, without any farther investigation, they hold it competent to reject the claim. Thus, several qualifications, created by Earl Fife on certain fishings in the river Doveran, were rejected, first by the freeholders, and afterwards by the Court of Session, in respect that it appeared, from a deed under the late Earl's hand, that these fishings were held of the royal burgh of Banff, and not of the Crown. See APPENDIX. See No 110. p. 8687.

A similar judgment was pronounced in the course of the same session, 1777, Alexander Pierie *contra* Hay of Mordington, see APPENDIX.

Fol. Dic. v. 3. *p.* 431. *Wight, p.* 223.

1779. *February* 17. JOHN BURN *against* WILLIAM ADAM.

No 230.

Freeholders have no right to call for the warrant of the charter on which the infeftment proceeds, or to object that

AT the Michaelmas head court for the county of Kinross 1778, John Burn claimed to be enrolled as a freeholder on the following titles; *1mo*, Charter of sale and resignation under the great seal of the lands and barony of Kinross, and others, in favour of George Græme, Esq.; *2do*, A contract of wadset, by which Mr Græme disponed to the claimant certain parts of the lands contained in the charter, and conveyed the said charter and precept of sasine to him, so

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it is not conform to the signature, or to enter into a discussion of a claim as to progress.

far as respected the lands mentioned in the contract; 3*tio*, Instrument of sasine proceeding on the charter and contract. Along with these titles, the usual certificate was produced, that the lands disponed stood valued in the cess-roll at or above L. 400 valued rent.

Objections were made to the claimant's titles by Mr Adam, one of the freeholders, and it was carried on a vote not to enrol. The claimant complained to the Court of Session.

In the answers to this complaint, the following objection, which had not been made at the meeting, was stated to the claimant's qualification. The charter of the estate of Kinross, and, in particular, that part of it disponed to the claimant, is disconform to the signature on which it proceeded, in this respect, that the charter contains different parcels of land said to be part of the barony of Kinross, which are not specified in the signature, as comprehended in this barony. The charter, therefore, as being disconform to its warrant, is void, and consequently cannot avail the complainer in support of his claim.

The claimant *contended*, in the *first* place, That the court was not competent to judge of this objection, because it had not been proposed in the meeting of freeholders, and was only stated in the proceedings upon the summary complaint.—Upon this point the same arguments were used by the parties, as in a case where it had formerly occurred, Stewart *contra* Dalrymple, July 28. 1761, No 18. p. 8579. in which the court had sustained their jurisdiction by a judgment affirmed in the House of Lords It was further

Pleaded for the complainer; That the court of freeholders were not competent to judge of this objection, though it had been stated at the meeting.

A charter from the Crown, of lands of such value as the law requires, and infeftment on it, are the only titles requisite to produce to the meeting of freeholders in order to be enrolled. The jurisdiction of the freeholders goes no further than to see the proper evidence, that the claimant has those feudal titles vested in him.—They may judge of such objections to the validity of the titles as appear on the face of them; but they have no right to investigate the grounds and warrants of the charter, in order to determine upon its validity.—They cannot even oblige the claimant to produce them.

Mr Graeme's charter from the Crown is *ex facie* perfectly complete, containing every parcel of land upon which the complainer founds his qualification. The objection now offered does not appear on the face of the charter, but is gathered from one of its warrants. It is therefore extrinsic, and cannot be judged of by the freeholders.—The proceedings of freeholders in taking cognizance of extrinsic objections have been often over-ruled by the Court; Sir Patrick Dunbar against Budge, 26th February 1745, No 220. p. 8844.; Campbell of Shawfield against Muir, 5th February 1760, No 8. p. 7783.; Walter Stewart against David Dalrymple, 28th July 1761, No 18. p. 8579.—The Court

No 230. have decided on the same principles in a variety of cases where objections were made to decrees of division, produced in evidence of the claimant's valuation.—Such objections as appear *ex facie* of the decree, may be considered by the freeholders; but they cannot enter on any extrinsic objection drawn from the grounds of the decree; Galbreath against Cunningham, 17th January 1755, No 51. p. 8644.; Forrester against Preston, 18th February 1755, No 75. p. 8661.; Wemyss against M'Kay, 28th February 1759, see APPENDIX; Campbell against Muir, 5th February 1760, No 8. p. 7763.

Answered for the respondent; It may be admitted, that the freeholders are not entitled to investigate the grounds of the claimant's charter, in order to determine, whether the right of property belongs to him, or to a third party. The claimant, by possessing under his charter and infeftment, is held in law to be the proprietor; and the freeholders have no jurisdiction to inquire any farther.—His right of property under these titles can only be challenged by a person claiming a right in himself to the lands. If the party entitled to bring the challenge does not choose to insist in it, but allows the claimant to continue in possession, it is *jus tertii* for the freeholders, or any other person, to object. This was the only point determined by the Court in the decisions founded on by the complainer.

But, where the objection does not depend on a third party having a preferable right to the claimant, but on the validity of the titles themselves, and they are challenged as void and null, the objectton is not *jus tertii* to the freeholders. If they have any right to see that title-deeds shall be produced at all, they must likewise be competent to examine, whether these deeds are false, or subject to any nullity; and, for this purpose, to admit of every kind of evidence, whether intrinsic or not.

Objections perfectly clear may lie to the verity of the tides, though not appearing on the face of them. A charter cannot be considered as proceeding from the Crown, if it has not the authority of a signature.—The writing is null and void, as much as if it were forged; consequently the freeholders would be competent to judge of the objection, though it might require extrinsic evidence to support it. There is no distinction betwixt the case where a charter proceeds, without the authority of any signature, and the present case, where the signature does not authorise the charter; and the subjects conveyed by the latter are not mentioned in the former.—The freeholders, therefore, were competent to have judged of this objection.

The merits of the objection itself were argued by the parties, but received no judgment, the Court being of opinion, that the freeholders were not competent to judge of the objection.

The judgment was, 'repel the objections against the said John Burn his being enrolled in the roll of freeholders for the said county of Kinross; and find, that the freeholders of said county did wrong in refusing to enrol the said John

Burn in the said roll; and therefore grant warrant to, and ordain the sheriff-clerk of said county to add his name to the said roll.' No 230.

Act. *Rae, Al. Murray.* Alt. *Crosbie.*
Fol. Dic. v. 3. p. 431. Fac. Col. No 70. p. 132.

1790. *February* 23. WILLIAM NISBET *against* CHARLES HOPE.

No 231.
In questions respecting freehold claims, an extract of a charter from the records of Chancery not admitted.

WILLIAM NISBET claimed to be enrolled among the freeholders of the county of Linlithgow, in the right of his wife, whose estate, acquired by singular titles, and partly consisting of a right of superiority alone, was rated in the cess-books at L. 406: 6: 8.

In evidence of his wife's right to the lands, Mr Nisbet produced an extract from the records of Chancery of a charter in her favour, with an instrument of sasine, in which it was mentioned, that the wife's attorney had produced, as the warrant of her infeftment, 'quantum resignationis chartam sub sigillo per 'unionis tractatum custodiend. et in Scotia loco et vice magni sigilli ejusdem 'utend. ordinat. præceptum sasinæ subinsertum in se continen. de data,' &c.

Mr Hope, a freeholder in the county, objected to this claim, 1*mo*, That the extract from the records of Chancery was not sufficient; and, 2*do*, That a husband could not be enrolled in consequence of a right of superiority belonging to his wife. The freeholders refused to enrol. Mr Nisbet therefore complained to the Court of Session, and

Pleaded; An extract from any legal record, is equally respected with the principal writing itself, where its authenticity is not called in question; and therefore, the extract from the Chancery here produced, ought to have been sustained as full evidence of the charter, which was duly registered there. It may perhaps be said, that being only a copy of a charter, as it was prepared for passing the Great Seal, it does not appear from thence that the Great Seal was actually affixed to it. This objection, however, seems to be fully removed by the instrument of sasine, from which it appears, that the charter had been completed in the usual manner.

The other objection seems to be equally erroneous. It is declared by the statute of 1681, that husbands shall be entitled to vote for the freeholds of their wives; and thus, whatever would be the foundation of a right to vote if belonging to the husband himself, must be equally available to him when belonging to his wife. And although, by the subsequent enactment of 12th Anne, it was provided, 'That no husbands should vote at any ensuing election, by virtue of 'their wives' infeftments, who are not heiresses, or who have not right to the 'property of the lands on account whereof such vote shall be claimed;' this was thrown in merely to prevent the creation of occasional votes on the eve of an election, in the shape of liferents or redeemable rights, granted to wives for