

No 261.

A part of a claimant's title-deeds, in his possession when enrolled, but not exhibited to the meeting of freeholders, admitted, in the Court of Review, to be produced, to obviate a complaint against the enrolment.

1781. *March 6.*JOHN HAMILTON *against* ROBERT CATHCART.

IN the year 1703, Mr Cathcart of Carleton obtained a charter of resignation under the Great Seal of certain lands; and, in the same year, he disposed these lands and charter of resignation to Robert Cathcart of Genoch.

Upon Genoch's death, his son, John Cathcart, was served heir in general to him, thereby deriving right to the charter of resignation and disposition; and his infeftment upon the service, which was duly retoured, was recorded the 8th of December 1738. Upon these rights, together with a retour, dated 29th August 1677, for proving the old extent, he was admitted to the roll of electors for the county of Ayr.

At the Michaelmas meeting of the freeholders in that county in 1780, Robert Cathcart, son to John, claimed to be enrolled as apparent heir of his father, lately dead; and his claim, founded on the titles already recited, was unanimously sustained.

It was discovered that Mr Cathcart had not exhibited to the freeholders the disposition by Carleton to his grandfather. In a complaint at the instance of Mr Hamilton, it was

Pleaded; By the act 16th Geo. II. it is provided, That no heir apparent shall be enrolled until his predecessor's titles are produced. The charter of resignation founded on is not in favour of the ancestor, but of Carleton. A disposition from Carleton, therefore, is absolutely necessary for connecting the charter in his favour, with the infeftment in favour of the predecessor. Without it the ancestor's rights are incomplete, and could neither afford a title of prescription, nor for being enrolled as a freeholder. The claimant, therefore, not having produced the disposition in favour of his ancestor, has not complied with the legal requisites, and the freeholders did wrong in admitting him to the roll.

It is not sufficient to elide this objection, that Mr Cathcart had this evident in his possession at the period of his enrollment. The freeholders did wrong in admitting the claimant, contrary to the express prescription of the law; and although the Court of Review may receive new evidence in support of titles produced to the freeholders, it cannot judge of titles which, though mentioned in the claim, and essential to the qualification, were not exhibited at the enrollment. According to this doctrine, the Court decided in the cases of Sir John Gordon against the Freeholders of Cromarty, affirmed by the House of Lords (*see* APPENDIX); of Mr Edmonstone of Duntreath against Freeholders of Dumbartonshire, 29th Feb. 1780, No 253. p. 8870; and of Mr Moodie of Melsetter against Freeholders of Orkney, 10th Feb. 1781, No 254. p. 8871.

Answered for Mr Cathcart; The disposition in question was in the possession of the claimant when he was enrolled, and could have been produced, had it been called for. The same justice, which listens to an objection omitted at the enrollment, which was the proper season for making it, will afford the other

party an opportunity of defending himself. It is therefore competent to the respondent to obviate the objection, by producing the disposition at the bar.

No 261.

In the cases referred to, the objection had been moved at the enrolment, whereby the claimants had an opportunity of removing it, if they had been in a capacity to do so.

“ THE LORDS repelled the objection, and dismissed the complaint.”

Alt. *M. Laurin, J. Boswell.* Alt. *Geo. Buchan Hepburn.*

C.

Fol. Dic. v. 3. p. 436. Fac. Col. No 45. p. 80.

. This judgment was approved of by a Committee of the House of Commons, appointed to try the merits of the election for the county of Ayr.

1786. *July 26.* ERSKINE KNIGHT *against* ROBERTSON.

In the case of Mr Erskine Knight, No 189. p. 8815. new evidence was admitted in the Court of Session, of the allegation, that Mrs Erskine was an heiress of provision, and therefore that her husband had right, as tenant by the courtesy, to continue on the roll after her death.

No 262.

Fol. Dic. v. 3. p. 437.

1791. *February 1.* BRUCE *against* DAVIDSON.

At the meeting of election for the county of Stirling, 3d July 1790, Colonel Andrew Bruce claimed enrolment, as having right to the lands of Balquhatston, Above-the-Hill or Bunie hill of Balquhatston, Wester Balmitchel, and Bulliondale, part of the lands of Slamannan. It having been *objected*, That no entry corresponding to these lands appeared in the valuation or cess-books, it was *answered*, ‘ The claimant’s lands stand distinctly rated at L. 400 in the valuation and cess-books, under the names of the vassals; and the claimant is ready to show, by the charters of the vassals, that these names in the cess and valuation-books, do apply to the lands upon which he claims to be enrolled, and to no other.’ It was *replied*, That this ought to have been shown to the Commissioners of Supply; and, in fact, there had been an application made to them for that purpose, and a report made up by a Committee; but, as that report had not been approved of by a general meeting, the freeholders rejected the claim. Upon a complaint, however, the Court allowed a proof of the correspondence of the lands claimed on, with the entries in the cess-books; and, on advising it, they ordered Colonel Bruce to be enrolled.—*See APPENDIX.*

No 263.

Fol. Dic. v. 3. p. 436. Supplement to Wight, p. 5.