

off the roll. Freeholders of Lanark *contra* Menzies, in 1768; M^cQueen and Dundas *contra* Freeholders of Linlithgow, in 1768. See APPENDIX.

No 198.

With respect to the *second* objection, *pleaded*; It is true the complainer has granted a disposition of the lands composing his qualification, with procuratory and precept; but then the procuratory is expressly so limited, that it cannot 'take effect until his death;' the plain consequence of which is, that he retains the right of superiority during his life. Besides, the disponent has executed a separate obligation, by which he has bound himself to hold the lands of the complainer during his life, and neither to execute the procuratory, nor confirm a base infeftment, nor adjudge in implement of the disposition. Murray *contra* Neilson, 5th March 1755. No 149. p. 8804.

Answered, with regard to the *first* point; A judgment of freeholders, when acquiesced in for four months, is not liable to review, any more than if it had been confirmed by a decision of this Court, or of the House of Peers.

With respect to the *second* objection; The lands are herèby absolutely conveyed, no limitation of the disponent's right appearing either in the dispositive clause, or in the obligation to infeft, which is both *a me* and *de me*; for, notwithstanding the reservation in the procuratory, the disponent might, by confirmation at any time, become the vassal of the Crown. The complainer's right has thus become precarious; and none such, a proper wadset alone excepted, can constitute a freehold qualification. Nor can the obligation referred to have any other effect than to shew the complainer's sense of the lameness of his right. It has, however, been put on record; but if that circumstance could have mended the matter, it should have been year and day prior to the meeting; whereas it was not even executed three months before it. 17th January 1755, Dundas *contra* Craig, No 166. p. 8788.

Replied; Registration year and day previous to enrolment is indeed necessary as to every writing or deed on which the claimant, either in whole or part, founds his title. But here the obligation is none of the grounds of the complainer's title, being calculated merely to obviate any objection that might eventually be made to these grounds.

THE LORDS "ordered Captain Dunbar to be added to the roll."

Act. Lockbart.

Alt. M^cQueen, Ilay Campbell.

Fac. Col. No. 108. p. 289.

1781. *January 23.* ILAY CAMPBELL *against* MALCOLM FLEMING.

IN the year 1773, Mr Fleming was admitted to the roll of freeholders in the county of Dumbarton, as liferenter of sundry lands, part of the estate of Cumbernauld. In October 1779, Lady Elphinstone, proprietrix of that estate, for

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No alteration
of circum-
stances when
the renewal

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of the freeholder's investiture does not proceed upon his resignation.

the purpose of creating a qualification on the fee of these lands, granted a new disposition to Mr Fleming, in life, and to another person in fee.

Upon this disposition, which was immediately followed with infeftment, the bar lodged a claim, to be enrolled at the Michaelmas head-court 1780; and, in this claim, Mr Fleming concurred, stating his newly acquired titles, and concluding either to be continued in his former place on the roll, or to be enrolled of new.

The meeting for electing a Member for the county having taken place on the 14th September 1780, it was *objected* to Mr Fleming's remaining on the roll, that, by his acceptance of a new right, and claiming to be enrolled thereon, he had virtually renounced that upon which he was admitted to the roll.

To this objection it was held by the Court to be sufficient answer, that, as the new infeftment did not proceed upon Mr Fleming's resignation, the old one still subsisted in his person. They, therefore,

“ Repelled the objection.”

Objector, *Izy Campbell.*

Alt. *Ro. Dundas.*

C.

Fac. Obl. No 22. p. 43.

No 200.

A party granted to his son a disposition of the lands on which he had stood on the roll. His son was infeft; but, six months before an election, granted an obligation not to execute the procuratory. The disponent found to have suffered no such alteration of circumstances as to occasion his expunction from the roll.

1781. *March 7.* JOHN RUSSEL *against* WILLIAM FERGUSON.

MR FERGUSON stood upon the roll of freeholders in the county of Ayr as infeft in the lands of Auchinsoul. In the year 1766 he granted a disposition of these lands to his son, containing procuratory and precept, and the son took infeftment on the precept.

In the month of April 1780, Mr Ferguson, for the purpose of preserving his freehold qualification, obtained from his son an obligation ‘not to execute the procuratory, nor take any step for divesting him of the superiority of the lands during his life.’ And this obligation was immediately recorded in the register of renunciations and reversions.

At the meeting for election taking place six months after the date of this obligation, an objection was stated to Mr Ferguson's title, that, by granting the disposition of his estate, his right therein became defeasible, and of course ceased to entitle him to the privileges of an elector; and that the obligation from his son, not having been perfected year and day, was ineffectual to restore him.

This challenge, which was over-ruled by the freeholders, was brought under review of the Court of Session, when it was

Pleaded for Mr Ferguson; Freeholders cannot expunge a person from the roll, on account of an alteration of circumstances, where the title on which he was admitted cannot be defeated by such alteration. The amount of the present