

## No 199.

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 investiture, 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 investiture 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 investiture; 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 investiture 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 investiture 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

objection is, that it was in the power of a third party, at one period, to have defeated the respondent's freehold qualification

No 200.

The requisite of year and day, introduced by the 12th of Queen Anne, and continued by subsequent statutes, was calculated to prevent the admission of nominal and fictitious voters, reared up on the eve of an election, not to afford a captious and unnecessary challenge against persons already enrolled.

Had Mr Ferguson been divested of the superiority, it might have been contended, that the same formalities were necessary as in a new acquisition. But he has at every period been superior of the lands; and no deed by his son, nor diligence of his creditors, can denude him.

'THE LORDS repelled the objection, and dismissed the complaint.'

Act. W. Bailie.

Alt. J. Boswell.

C.

Fac. Col. No 49. p. 87.

\* \* \* A similar case had occurred from Perth in 1765, Craigie of Dumbarnie,  
See WIGHT. See APPENDIX.

1790. December 8. The Hon. JAMES ERSKINE *against* ROBERT GRAHAM.

No 201.

MR JAMES ERSKINE of Alva, one of the Senators of the College of Justice, being superior of certain lands in the county of Stirling affording a freehold-qualification, conveyed to a relation of his, a liferent of the superiority; and a charter of resignation was obtained from the crown, in favour of that person in liferent, and of his Lordship in fee.

A superior of land obtaining a charter of resignation in favour of another person in liferent, and of himself in fee, may, nevertheless, claim enrolment as a freeholder in virtue of his former investitures.

When this transaction took place, Lord Alva was enrolled among the freeholders of the county of Stirling, as proprietor of certain lands, which he afterwards sold. At the meeting, therefore, for electing a member of parliament on 6th July 1790, he claimed enrolment, as superior of the lands first mentioned, and for that purpose he produced his investitures, which had been completed before the giving away of the liferent-right.

To this claim it was objected by Mr Graham, one of the freeholders, that, by the resignation, the former investitures had been completely done away, and could not be the warrant of an enrolment. This objection was sustained by the freeholders.

But, after advising a petition and complaint for Lord Alva, which was followed with answers, replies, and duplies, the Court being clearly of opinion, that a charter of resignation in favour of the resigner himself, though burdened with a liferent in favour of another person, did not invalidate a claim of enrolment, founded on the former investitures,

The Lords found, That the freeholders had done wrong in not admitting Lord Alva, &c. and found expences due.

*Nota,* Before these proceedings, the liferenter had executed a renunciation of his right, and Lord Alva had obtained a new charter. This however, he