

the same manner as a debtor whose lands are adjudged ; and his right is completely restored, by renunciation of the trustees, and without new infeftment.

No 114.

In this case no infeftment has followed on the trust-right ; neither was there any evidence, when the objection was made, that either the trustees or creditors had accepted thereof. It was, therefore, no more than a mandate to sell, which no person ever conceived to be fatal to a qualification.

2do, Mr M'Adam's right to vote is ascertained by the statute 1681, cap. 21. by which it is provided, ' That no person infeft for relief or payment of sums, shall vote, but the granters of the said rights.'

Pleaded for the Objectors ; It has been decided, in numberless instances, that a disposition with procuratory and precept, did incapacitate the granter from voting ; and there is no distinction in law arising from the purposes of such grants.

If the trustees had executed the procuratory, or obtained confirmation of the infeftment taken on the precept, they would have become the Crown's vassals, and the truster's right would have resolved into a reversion, which was personal, and would be taken up by his heir, by general service. Nothing prevents the trustees from taking these steps at any time.

2do, In rights for relief or security of sums of money, although the incumbrance may render the property useless, or of little value to the proprietor, the radical right still remains in him. In trust dispositions, the granter's right may, in a moment, be totally annihilated ; and, in the present instance, it is already entirely dissolved, the trustees having sold the subjects at a price inadequate to the payment of the truster's debt.

THE LORDS " sustained the objection, and ordered the respondent to be expunged from the roll."

Act. *George Fergusson.*Alt. *James Boswell.**Fol. Dic. v. 3. p. 417. Fac. Col. No 50. p. 88.*1786. *March 11.*ROBERT DONALDSON and Others *against* SIR LUDOVICK GRANT.

AT a meeting of the freeholders of the county of Nairn, for electing a Member of Parliament, it was *objected* to one of them, that he had granted to a trustee, for behoof of his creditors, a disposition of the lands on which he stood enrolled, containing procuratory of resignation and precept of sasine, in virtue of which precept the trustee was infeft, full powers being thus conferred on the disponee to enter into possession, levy the rents, sell the estate, and apply the proceeds towards payment of the debts ; and, in support of the objection, it was

No 115.
A trust conveyance for behoof of creditors does not take away the right of voting at the election of a Member of Parliament.

No 115.

Pleaded; Though the trustee's infeftment was a base one, he could at any time become publicly infeft in virtue of the procuratory of resignation. The right, therefore, of the truster is defeasible at the will of another person, nor can such a precarious title be understood as that public infeftment and possession which are required by the statute of 1681. 7th March 1781, Muir and Dalrymple *contra* Macadam, No 114. p. 8688.

Answered; The statute of 1681 explicitly declares, 'That no person infeft for relief or payment of sums shall have vote, but the granters of the said rights, their heirs and successors.' Now, the trustee, as in the room of the creditors, is a person so infeft; and therefore that provision applies directly to the present case. His possession is virtually that of the truster. The case of Macadam, if not determined on a specialty resulting from the sale of a part of his estate prior to the day of election, ought not to be regarded as a precedent.

THE COURT considered the possession of the trustee to be truly that of the truster, and that this case fell directly under the above provision of the statute; and therefore

They repelled the objection, and dismissed the complaint.

For Objectors, *Wight*.

Alt. *Abercromby*.

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Fol. Dic. v. 3. p. 417. Fac. Col. No 271. p. 418.

1790. May 16.

ALEXANDER MURRAY *against* ALEXANDER MUIR-MACKENZIE.

No 116.

A claim for enrolment by a liferenter, ought to specify the nature of his right.

In the claim exhibited for Mr Murray, in order to his being enrolled among the freeholders in the county of Perth, it was stated, that "he was publicly infeft in all and whole the half of all and whole the lands of Ruskie, with the manor-place thereof," &c.

The dates of a Crown charter, in which these lands were granted to Lord Napier, of the assignation by his Lordship in favour of Mr Murray, of the infeftment which followed, and of its registration, were accurately mentioned; the valuation of the lands was also precisely stated.

Instead of having right to the property or superiority of the lands, Mr Murray was merely a liferenter of the superiority, the fee belonging to his brother. The freeholders, therefore, refused to enrol him. And a complaint being preferred to the Court of Session, Mr Muir-Mackenzie, by whom the objection had been made,

Pleaded, By the enactment 16th of his late Majesty, it was provided, "That, in order to prevent surprise at the Michaelmas meetings, every freeholder who intends to claim at any subsequent Michaelmas meeting of the freeholders, shall, for the space of two calendar months at least before the said Michaelmas