No 54. portion than it was actually entitled to; seeing at any rate the estate could afford no more qualifications than accords to the extent of its gross valued rent. See APPENDIX.

Fol. Dic. v. 3. p. 408.

1787. *February* 16. BOYES *against* FREEHOLDERS of RENFREWSAIRE.

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THE Marquis of Clydesdale's lands of Corseflat and Corseford in Kilbarchan parish, stood in a valuation roll at L. 400, and his lands of Corseflat and Corseford in Lochwinnoch parish stood valued at L. 352 : 3 : 4, in all L. 752 : 3 : 4. In a division of this valuation, the Commissioners, instead of dividing each separate article into its component parts, threw both together, and divided the whole according to the real rents at the time, by which means the valuation of the lands in Kilbrachan parish was reduced from L. 400 to L. 108 : 10s. and the valuation of those in Lochwinnoch parish was increased from L. 352 : 3 : 4, to L. 566 : 13 : 4. Boyes claimed to be enrolled *inter alia* on the lands of Corseford in Lochwinnoch, which, on the authority of this decree of division, stood valued at L. 90. The freeholders, in respect of the improper junction of the two separate *cumulos*, refused to admit him to the roll, and the COURT affirmed their judgment. See APPENDIX.

Fol. Dic. v. 3. p. 408.

1790. *December* 14.

SIR ALEXANDER CAMPBELL, Baronet, *against* PETER SPIERS.

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Objection, that two parcels of lands, separately valued, had been thrown together by the Commissioners, repelled, there having been acquiescence for many years.

IN the original books of valuation in the county of Stirling, the lands of Gargunnock were rated, *in cumulo*, at L. 863 : 18 : 8.

In 1740, the Commissioners of Supply disjoined the valuation of the lands of Fleuchames and Redmains, parts of the estate of Gargunnock, from that of the remainder, declaring it to be L. 108.

In 1753, the proprietor of this estate again applied to the Commissioners of Supply, for a division of the valued rent of the whole lands of Gargunnock. At this time, no notice being taken of the previous division made 13 years before, the lands were thrown together, and divided according to the real rents: And in this division all parties acquiesced, Sir James Campbell the proprietor, and several other persons, having been, in virtue of it, admitted to the roll of freeholders.

In 1787, Sir James Campbell executed a trust-settlement of his estates, the purpose of which was, ' to make provision for the payment of his debts, and

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'for laying down a proper plan for the management of his estates, in the event 'of his decease before the debts were cleared off.'

The trustees were authorised to enter into possession, to apply the produce of the lands towards the payment of his debts, one half, however, being appropriated to the maintainance of the heir, and to sell so much of the lands as was necessary; and after the purposes of the trust were accomplished, the trustees were to denude in favour of certain heirs of entail named by Sir James Campbell.

The trust-deed containing a procuratory of resignation and a precept of sasine, the trustees, after the death of Sir James Campbell, in 1788, took a base infeftment; and they entered into possession, or levying the rents, &c.

But in April 1790 they executed a deed renouncing the procuratory of resignation, and agreeing to hold the lands of Sir Alexander Campbell, the truster's eldest son, and heir of entail.

At the meeting for electing a Member of Parliament for the county of Stirling, on 6th July 1790, Sir Alexander Campbell claimed enrolment as apparent heir of his father. Three objections were stated by Mr Spiers, a freeholder then present, *1st*, That by the trust-deed the right of Sir James Campbell and his heirs became defeasible at the will of other persons, and consequently ceased to give a right to vote; *2dly*, That those apparent heirs only could be enrolled as freeholders who were *in possession* of the lands which had belonged to the ancestor; and, *3dly*, That the decree of division in 1753, on which Sir James had enrolled, was void and null, the Commissioners of Supply having blended two estates which had formerly been separately valued.

These objections having been sustained by the freeholders, Sir Alexander Campbell complained to the Court of Session; when, in support of the objections, Mr Spiers

Pleaded, *1mo*, It was in the power of the trustees appointed by Sir James Campbell, by executing the procuratory of resignation, or by selling the lands, to divest him entirely of his estates; and therefore it would be equally contrary to the purity and independence of our Parliamentary representation, if a person so situated, or his heir, were to be admitted to vote. The deed executed by the trustees after the death of Sir James Campbell, whereby they became bound not to execute the procuratory of resignation, is of no importance, as it could be no hindrance to a purchase from the trustees. And so the Court seems to have decided, 7th March 1781, Muir and Dalrymple against M'Adam, Div. 4. § 1. *h. t.*; 15th May 1789, Williamson *contra* Smith, see APPENDIX.

2do, Although the freehold qualification in the person of Sir James Campbell had been liable to no objection, it would not follow, that the claim offered by his son should be sustained. By act 1681, it is indeed declared, that apparent heirs may be admitted in virtue of their predecessors infeftment, if not indiscriminately given to all apparent heirs, but is confined to those *who are in pos-*

No 56. *session*; a requisite which does not here occur, the trustees named by Sir James Campbell still continuing to levy the rents.

3*tio*, There is no evidence that the lands which belonged to Sir James Campbell are of the valuation required by law. The decree of division in 1753 is, *ex facie*, irregular. Instead of setting apart L. 108 as the valuation of the lands of Fleuchames and Redmains, and then proceeding to a division of the remaining valuation among the other lands contained in the original *cumulo*, amounting to L. 755: 18: 8, the Commissioners took it upon them to blend two parcels of lands which stood separately valued; a proceeding wholly unauthorised. As this objection appears from the books of valuation, it might be stated, without any action for setting aside the decree; 19th January 1781, Sir John Scott and others *contra* Robert Trotter, see APPENDIX; 16th February 1787, John Boyes *contra* Freeholders of Renfrewshire, No 55. p. 8652.

It is of no consequence, that the decree of division has hitherto remained unchallenged, the land-tax for the whole lands having been paid by Sir James Campbell, or his trustees. If a contrary argument were to be listened to, a division at an unauthorised meeting of the Commissioners, or made by private agreement, might be sustained in opposition to the established law. And it is of as little importance, that, in making the division, no real injustice has been done; the law having required the valuation of lands in virtue of which an enrolment is claimed, to be quite distinct and separate from that of any other person enrolled, as having right to be enrolled as a freeholder.

Answered, 1*mo*, A voluntary trust-conveyance, even for the benefit of creditors, has been found no bar to an enrolment, the radical right of property still remaining in the truster; *a fortiori* such a settlement as here occurs cannot be thought to disqualify the person by whom, or for whose benefit it is executed. So it was determined, 5th March 1755, Murray against Neilson, Div. 4. § 6. *h. t.*; and also 11th March 1786, Donaldson and others *contra* Sir Ludovick Grant, Div. 4. § 1. *h. t.*; the intermediate decision in the case of Macadam having been considered as founded on specialities.

2*do*, The objection drawn from the act of 1681 is equally groundless. The statutes relating to elections do in general require, that the party claiming enrolment, or exercising his right of voting after he is enrolled, shall be in possession. But it is not more necessary in the case of an apparent heir, than in that of any other person laying claim to enrolment, that he should be in the natural possession of the lands. In this case, the claimant is virtually in possession, that held by the trustees being in his possession.

3*tio*, Although the decree of division in 1740 had been given at a meeting regularly called, and upon proper evidence, yet having been so long departed from, and the subsequent decree in 1753 having been acquiesced in by all parties, it could not be resorted to unless in a proper action for setting aside the later decree; 25th June 1780, Shaw Stewart *contra* the Freeholders of Renfrew, see APPENDIX. Nor would such an action be listened to in a question of

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enrolment, unless it could be shown, that if the proceedings had been accurately gone through, the freeholder would not have had the requisite valuation. By one decision, it is true, in the case of Trotter, a different rule was followed; but in many other an objection similar to the one here urged has been disregarded; Wight on Elections, Scot against Elliot, 17th January 1781, No 97. p. 8681.; Scot, &c. against Dalrymple, *eodem die.*——See APPENDIX.

THE COURT considered the objection arising from the trust-settlement as without any solid foundation. Even although the trustees had obtained a Crown-charter, this, it was observed, would not have precluded the truster, or his heir, from the privilege of voting as a freeholder,

The objection relative to Sir Alexander Campbell's claiming as apparent heir, was held to be equally groundless.

As to the decree 1753, the opinion of the Court seemed chiefly to rest on the long silence of all the parties who were entitled to bring it under challenge, it being understood, that as the prior decree was sufficiently regular, it was competent, without any process of reduction, to challenge the subsequent one, in which it was dirsegarded.

After advising a petition and complaint for Sir Alexander Campbell, which was followed with answers, replies, and duplies,

THE LORDS found, That the freeholders did wrong in not admitting Sir Alexander Campbell to the roll of electors.

A reclaiming petition was preferred. The arguments in it were entirely confined to the validity of the decree of valuation in 1753; but it was refused without answers.

Act. *Solicitor-General, et alii.* Alt. *Dean of Faculty, Wight, et alii.* Clerk, *Home.*

C. *Fol. Dic. v.* 3. *p.* 408. *Fac. Col. No* 159. *p.* 318.

*** This case was appealed:

THE HOUSE OF LORDS, 5th March 1791, 'ORDERED that the appeal be dismissed, and the interlocutors complained of affirmed.'