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*.

S. *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

meeting, leave with the Sheriff or stewart clerk a copy of his claim, setting forth the names of his lands, and his titles thereto, with the dates thereof, with the old extent or valuation upon which he desires to be enrolled; and in case of his neglect to leave his claim as aforesaid, he shall not be enrolled at such Michaelmas meeting." No 116.

A claimant cannot be thought to comply with this regulation, by merely stating the names of his lands, and the dates of the writings to be produced by him, leaving the freeholders from thence to discover the nature of his qualification, and the peculiar character in which he has a title to be enrolled. Least of all can it be thought, that a discription of titles, quite inconsistent with the the true nature of his right, is to be admitted. Here then the claim preferred for the complainer was wholly incompatible with the purpose of the law, the statement exhibited by him having, as it would seem, been purposely so framed, as to give the freeholders a more favourable opinion of his qualification than it truly deserved. This reasoning is supported by a decision, 3d March 1773, Gordon against Abernethy of Mayen, *infra*, *h. t.*

Answered, The statute requires a specification of the names of the lands, the titles of the claimant, the dates of those titles, and, lastly, the old extent or valuation. The claim here given in was therefore precisely agreeable to the directions of the law. It is no where said, that the nature of the estate, whether as a liferent or fee, a wadset, a right of apparency, or of courtesy, should be accurately defined. Nor is this at all necessary, as it must be presumed, that the freeholders, after the enumeration already mentioned, will be fully able, by inspecting the public records, to prepare themselves for giving a determination.

The former precedents, so far from enlarging the operation of this law, which is of a correctory nature, have tended to restrain it within the narrowest bounds. Thus it was found, that an omission to mention the date of a retour was not fatal to a claim for enrolment. And in the same manner, where the date of one charter had been erroneously stated, while that of another was wholly omitted, the claim was nevertheless sustained. In the present case, it was easy, from the writings specified in the claim, to discover that the claimant's right was a liferent, though as free from the challenge of nominality as any right of the same nature can be. The case referred to on the other side was very different from the present one, both the dates of the titles, and the names of the lands, having been omitted, Wigton on Elections, 4to edit. p. 151. *See* APPENDIX.

A feeble attempt was made to shew that Mr Murray's qualification was nominal and fictitious. But the judgment of the Court proceeded on the defect of the claim exhibited for him, which did not appear to fulfil, in any reasonable manner, the purposess of the statute.

After advising the complaint, with answers and replies,

"THE LORDS dismissed the complaint."

No 116. A reclaiming petition was afterwards preferred, and followed with answers, but the Court adhered.

Act. *Rolland, Macleod-Bannatyne.* Alt. *C. Hay.* Clerk, *Sinclair.*

C. *Fol. Dic. v.* 3. *p.* 413. *Fac. Col. No* 129. *p.* 250.

1792. *January* 24.

LORD DAER, eldest Son of the Earl of Selkirk, *against* The Honourable KEITH STEWART, and Others, Freeholders of the County of Wigton. *

No 117.
The eldest son of a Peer of Scotland has not a right to be enrolled a freeholder to vote in the election of Members of Parliament for counties in Scotland. Affirmed upon appeal.

AT the Michaelmas meeting of the county of Wigton, held upon 6th October 1789, Basil William Douglas, commonly called Lord Daer, eldest son of the Earl of Selkirk, presented a claim to be admitted on the roll of freeholders, upon certain titles therewith produced.

To the titles upon which the claimant desired to be enrolled, no objection whatever was stated; but the minutes of the meeting bear, "That a vote having been put, Whether the claimant, as the eldest son of a Peer, be capable to be enrolled as a freeholder, or not? all the freeholders present voted not, except Sir William Maxwell, who voted enrol, and the Reverend Dr William Boyd, who declined to vote. The meeting, therefore, refused to enrol the claimant."

Against this determination of the freeholders, Lord Daer presented a complaint to the Court of Session, under the authority of the statutes of the 16th of the late King, and of the 14th of his present Majesty. The Court ordered a hearing in presence, and the cause was argued for several days.

Upon the part of Lord Daer, it was *stated*, That the fact of his being possessed of lands holding of the Crown, fully entitling him to be enrolled a freeholder of the county of Wigton, was not disputed; but notwithstanding this, it was maintained, that by being the eldest son of a Peer of Scotland, he was precluded from that right which the same property would give to any other person; and therefore the subject of enquiry was, by what law, or by what authority, this exclusion could be supported.

In following out this enquiry, it was proper to take a view of the constitution of the Parliament of Scotland, in so far as it respected the rights of the eldest sons of Peers, from the earliest periods to which it can with any certainty be traced, down to the time of the treaty of Union in 1707; and this came naturally to divide itself into two different branches: The *first*, comprehending the ancient period down to the year 1587, when representation was introduced;

* The circumstance of this being a question regarding the Constitution of the Ancient Parliament of Scotland, and necessarily depending upon a variety of historical facts and deductions, will, it is hoped, prove a sufficient apology for stating the argument at so much length.