

No 183.

But the claimant's father having only a base infestment, was not qualified, and the charter of confirmation, obtained after his death, cannot be considered as part of his titles; 3d July 1753, Abercromby against Gordon, No 177. p. 8801.

*Answered,* A charter of confirmation makes the base infestment public from its date; Erskine, b. 2. tit. 7. § 15.; Stair, b. 2. tit. 3. § 28. The intermediate death of the party infest does not hinder its operation; and to entitle an heir apparent to be enrolled, it is sufficient for him to produce titles in the person of his predecessor, which would have given him that privilege.

The Court, upon the grounds stated for the defender, dismissed the complaint.

Act. *George Fergusson.*Alt. *Cha. Hay.*Clerk, *Gordon.*

D. D.

*Fol. Dic. v. 3. p. 425. Fac. Col. No 14. p. 30.*1790. *December 14.*SPIERS *against* CAMPBELL.

No 184.

AN apparent heir of a person whose estate had been vested in trustees, was found entitled to vote.—*See APPENDIX.*

*Fol. Dic. v. 3. p. 426.*1803. *February 12.*STEWART *against* BLAIR.

No 185.

A vote given on a title of apparency is good, altho' there was a possibility of a nearer heir being in existence at the time.

THE Honourable Montgomerie Granville John Stewart objected to the claim of enrolment of David Blair, Younger of Borgue, Esq; in the roll of freeholders of the stewartry of Kirkcudbright. He claimed to be enrolled as apparent heir of the late Lieutenant-Colonel John Blair, his elder brother, proprietor of the lands of High Borgue, and others. He produced a charter under the Great Seal, in favour of David Blair, Esq; his heirs and assignees whomsoever, and a disposition of the lands granted by the said David to John Blair, his eldest son, and the heirs-male of his body, containing an assignation to the charter and precept, with an instrument of sasine following thereon, in Colonel Blair's favour; in consequence of which titles, he had for many years voted as a freeholder in the stewartry. He died on the 13th July 1802, leaving a wife, but no children; and his brother claimed upon his apparency on the 23d July thereafter, at a meeting for the election of a Member of Parliament. His claim having been sustained by the freeholders, Stewart presented a petition and complaint against the enrolment; and

*Pleaded, imo,* The destination to John Blair, and the heirs-male of his body, limited his right to that particular species of heirs, upon the failure of which, the