

No 231. the purpose of enabling their husbands to act as freeholders. Wight on Elections, p. 239.

Answered; As the seals in grants from the Crown, are what the subscription of an individual is in conveyances obtained from a subject, it was wisely provided by act 1672, c. 7. in order to prevent an improper or incautious use of them, that a record of all writings should be made up preparatory to their being authenticated in this manner. It may therefore be admitted, that an extract from this record is complete evidence of the charter or other writing having been prepared for passing the seals. This, however, is no evidence of the Great Seal having been affixed; and, until this be done, a Crown-charter is no more than an inchoated deed, which may be, and often is allowed to remain for ever in the same state. As to the instrument of sasine, it is merely the assertion of a notary, to which, unless it is supported by the relative writings, no regard can be paid.

2dly, A husband, since the enactment of 12th Anne, cannot be enrolled in virtue of his wife's infestment, but in two cases; *1st*, Where she is an heiress; and, *2dly*, Where she has the property of the freehold. In this enactment, as well as in feudal language, property is distinguished from superiority. Thus it is understood in the statute of 1681, where it is declared, that only 'those shall have right to vote, who are publicly infest in property or superiority.' And indeed, as those precautions, which have been used for preventing the undue multiplication of freehold qualifications, do not in general extend to the case of husband's claiming enrolment in right of their wives, such a limitation seems to be absolutely necessary.

Several of the Judges expressed an opinion, that both objections were well founded. But the former being the preliminary one, it appeared to be chiefly on this ground, that, after advising the petition and complaint for Mr Nisbet, which was followed with answers, replies, and duplies,

THE LORDS dismissed the complaint.

Act. Wight.

Alt. Williamson.

Clerk, Colquhoun.

G.

Fol. Dic. v. 3. p. 431. Fac. Col. No 118 p. 227.

No 232.

1790.

LORD ALVA *against* FREEHOLDERS OF STIRLINGSHIRE.

IN the case of Lord Alva, which occurred at the election 1790, for Stirlingshire, the same point occurred as in the case of Nisbet, No 231. *supra*; but it became unnecessary to decide upon it. His Lordship's charter was not lost, but in the hands of a freeholder in the opposite interest, and who refused to deliver it up. His Lordship, however, produced an extract of it from Chancery, and a notorial copy of an entry in the books of the keeper of the Great Seal, bearing the fees of it to have been paid; also referred to the minutes of

enrolment of a liferent-voter in 1766, which bore production of that very charter; and even an extract of his Lordship's sasine, produced by his opponent in support of another objection, certified, that a charter, complete in all its parts, was exhibited at taking the infestment. This was as strong a case as could well be figured, as the verity of the sasine could hardly be questioned by him who had produced it in support of an objection. Still, however, as law requires a charter to be produced as a claimant's title before the freeholders, none of these adminicles, or extraneous proofs, which have been mentioned, will supply its place, however decisive they might, and certainly would be, in an action of proving the tenor*. See APPENDIX.

No 232.

Fol. Dic. v. 3. p. 431. Supplement to Wight, p. 65.

1790. December 18. SIBBALD against DOUGLAS and KERR.

MR SIBBALD had purchased, at a judicial sale, lands which were there described as holding of the Crown. Having claimed on them at the election-meeting 1790, it was *objected*, that the lands held of the family of Lothian, and that the Crown-charter had therefore been improperly obtained. Two freeholders present, substitutes of entail to the superior, declared that they meant to bring a reduction of the charter upon that ground; and one of these substitutes, and another freeholder likewise present, declared that it consisted with their knowledge, that the lands had till very lately been held of that family. A majority of freeholders, upon this evidence, rejected the claim; but the Court of Session, on advising a complaint, with answers, found they had done wrong, and gave expenses to Mr Sibbald, though the summons of reduction was raised and executed before advising the complaint. See APPENDIX.

Fol. Dic. v. 3. p. 431. Supplement to Wight, p. 62.

* There is one inconvenience resulting from the doctrine, that an extract of a charter cannot supply the place of the original. In consequence of the statute 1672, there can be no proper extract taken from the office of the Great Seal, where the ultimate step is taken, as it is not a proper place of record. The books are never given up by the keepers or their representatives to their successors in office, nor transmitted to the general register-house, under the charge of the Lord Register and his deputies, along with the other public records of the kingdom, and the records of Chancery in particular; from which extracts are daily taken, signed by a principal Clerk of Session. It must often be very difficult, therefore, to get at the books of the Great Seal, at least if far back. Indeed it is said, that no other books are kept by those officers, except a minute-book, and copies of the charters as sent by the writers to the signet, along with the principal charters for sealing. In these circumstances, there can be no remedy but that of proving the tenor. This evil seems to require a cure, by appointing a proper record at the Great Seal-office, or otherwise.

No 233.