

1773. *March 10.*

JAMES GORDON of Badenscoth *against* General JAMES ABERCROMBIE of Glassoch, and Others.

**No 252.**

Where the judgment of court of freeholders refusing a claim enrolment, on titles that were laid before them, and objected to, is brought under review of this Court; and an additional objection to the title is newly made here, it is competent to receive evidence, in order to remove that objection.

AT Michaelmas 1772, Mr Gordon having claimed to be enrolled as a freeholder in the county of Banff; diverse objections were made to his title, and the majority of the meeting rejected his claim.

Mr Gordon having presented a complaint against this refusal, in the answers whereto, besides recapitulating the former objections, an additional one to his title was mentioned; he *insisted*, That, as this objection had not been stated in the meeting of freeholders, he was entitled to produce new evidence in support of his claim, which he offered to do.

To this the respondents *objected*, on the incompetency of admitting new evidence in the review-court, to overturn the judgment of the original one; referring to the argument maintained by them in the case of Gordon of Whitley, No 260. p. 8875.

'THE LORDS repelled' the objections made to the complainer's titles; but, before answer to the objections made in the answers, that the Castletown of Blairfindie, and Easter Blairfindie, are separate tenements, allowed the complainer to prove, that the lands of Easter Blairfindie are the same with the lands 'called the Castletown of Blairfindie.' And, upon advising the proof adduced, the COURT found this point proved; and, on the whole, found, that the freeholders did wrong in refusing to enroll the complainer; and, therefore, granted warrant to add his name to the roll.

*Act. Sol. General, Cosmo Gordon. Alt. Elphinstone, J. Boswell. Clerk, Pringle.*

*Fac. Col. No 67. p. 165.*

1780. *February 29.*

— *against* EDMONSTONE.

**No 253.**

SIR Archibald Edmonstone of Duntreath having obtained a charter of certain lands in Dumbartonshire, conveyed them, in September 1773, to Stewart of Fenwick in liferent, and to Archibald Edmonstone his own son in fee, and by the conveyance he assigned to them the precept of sasine in the charter, which still remained unexecuted. Both fiar and liferenter were accordingly infeft, and at Michaelmas 1774 the latter was enrolled a freeholder. The fiar was not then of age. He, however, claimed to be enrolled at Michaelmas 1779, and produced the charter in favour of his father Sir Archibald, together with his own sasine, and a regular certificate that the lands were of the requisite valuation; he neglected, however, to produce the conveyance from his father to Mr Stewart in liferent, and to himself in fee. The want of this disposition was accordingly made the ground of an objection to his being enrolled; but the

freeholders over-ruled the objection. A complaint was preferred against their judgment to the Court of Session; in answer to which, Mr Edmonstone founded upon the minutes of the meeting of freeholders in 1774, from which it appeared, that the conveyance had been laid before them, though it had afterwards been lost or mislaid; and in order to supply the defect, he produced a new conveyance from his father; but the COURT found, that the freeholders did wrong in enrolling him, and ordered his name to be expunged from the roll. See APPENDIX.

No 253.

*Fol. Dic. v. 3. p. 434.*

1781. February 10. MOODIE of Milsitter *against* BAIKIE.

MOODIE of Milsitter claimed, at the Michaelmas meeting 1780, to be enrolled as apparent heir to his father, in virtue of lands upon which both his father and grandfather had stood on the roll; but having neglected to bring with him his father's charter, and having only produced the sasine that had followed on that charter, the freeholders rejected his claim; and the Court of Session affirmed their judgment.

No 254.

*Fol. Dic. v. 3. p. 434. Fac Col.*

\* \* \* This case is No 180. p. 8806.

1796. May 14. PATRICK PROCTOR *against* Sir DAVID CARNEGIE.

PATRICK PROCTOR claimed to be enrolled as a freeholder in Forfarshire, and produced a charter from the Crown, containing lands affording a freehold qualification, in favour of the Earl of Strathmore; a disposition thereof to himself by Thomas Lyon and James Dundas, the Earl's Commissioners, containing an assignation to the unexecuted precept in the charter, and an instrument of sasine taken in virtue of it in his favour.

But he did not produce the Earl's commission to Messrs Lyon and Dundas; and although it was referred to in his claim, neither its date nor that of its registration were specified. Nor did it appear from his sasine, that it had been produced by his attorney to the Bailie when the infeftment was taken.

To these titles Sir David Carnegie

*Objected*; A claimant before his enrolment, must produce to the freeholders 'the whole titles and vouchers of his qualification;' 16th George II. Mr Proctor ought therefore to have produced Lord Strathmore's commission to Messrs Lyon and Dundas, as forming an essential part of his titles; because without it, he does not connect them with the charter on which his infeftment

No 255.

A claimant having produced, before a court of freeholders, a disposition from Commissioners, containing an assignation to a precept of sasine in a Crown charter in favour of their constituent, and his claim having been rejected, because he did not produce the commission under which the disposition