

No 179.

the possession is continued, and that there is no longer an obligation to convey to another; and the heir's giving a consideration for the discharge and obligation, is no admission that it is a new right.

To the *third*; That it is sufficient if the defender's right be properly established, and cannot be lawfully destroyed or impaired. The law presumes not any man's fraud; *quæ contra bonos mores sunt, nec facere nos posse credendum est.*

“ THE LORDS repelled the objections to the defender's qualification, and found, That he is sufficiently entitled to continue on the roll of freeholders for the shire of Selkirk; and therefore dismissed the complaint.”

Act. *Montgomery.*Alt. *Ferguson.*Clerk, *Forbes.*

S.

*Fol. Dic. v. 3. p. 425. Fac. Col. No 149. p. 222.*

1781. February 10.

MOODIE *against* BAIKIE.

No 180.

A person claiming to be enrolled as a freeholder, in the character of apparent heir, produced his ancestor's sasine, but not the charter upon which the sasine proceeded. His claim was rejected.

MR MOODIE, claiming to be enrolled as a freeholder in the county of Orkney, in the character of apparent heir, produced his ancestor's sasine, but not the charter upon which the sasine proceeded.

To this production, Mr Baikie

*Objected*: By statute 16th Geo. II. no person can be admitted to the roll of freeholders, as apparent heir, who does not exhibit a complete feudal title, in the person of the ancestor. An instrument of sasine is merely a relative writing, to which no credit can be given, if unsupported by the charter or other deed to which it refers.

This objection was sustained by the freeholders. Mr Moodie complained to the Court of Session, and there exhibited the predecessor's charter. But

“ THE COURT dismissed the complaint.”

For Mr Moodie, *Ilay Campbell, et alii.*Alt. *Rolland, et alii.*Clerk, *Tait.*

C.

*Fol. Dic. v. 3. p. 425. Fac. Col. No 31. p. 56.*

1781. February 10.

GEORGE HALDANE *against* THOMAS TRAILL.

No 181.

The claim of an apparent heir was set aside, though he produced titles, and his grandfather and father had been enrolled on the same lands, because there

AT a meeting of the freeholders in the county of Orkney, in 1780, Mr Trill demanded an enrolment, in the character of apparent heir.

In support of this claim, he produced two retours of the ancestor, and the instruments of sasine following hereon, both dated in 1723, and duly recorded.

To this claim Mr Haldane

*Objected*: To connect an instrument of sasine with the retour upon which it proceeds, it is necessary to produce the precept issued from the Chancery, by which the Sheriff is warranted to infeft the person served, in the lands contain-