

objection is, that it was in the power of a third party, at one period, to have defeated the respondent's freehold qualification

No 200.

The requisite of year and day, introduced by the 12th of Queen Anne, and continued by subsequent statutes, was calculated to prevent the admission of nominal and fictitious voters, reared up on the eve of an election, not to afford a captious and unnecessary challenge against persons already enrolled.

Had Mr Ferguson been divested of the superiority, it might have been contended, that the same formalities were necessary as in a new acquisition. But he has at every period been superior of the lands; and no deed by his son, nor diligence of his creditors, can denude him.

'THE LORDS repelled the objection, and dismissed the complaint.'

Act. W. Bailie.

Alt. J. Boswell.

C.

Fac. Col. No 49. p. 87.

* * * A similar case had occurred from Perth in 1765, Craigie of Dumbarnie,
See WIGHT. See APPENDIX.

1790. December 8. The Hon. JAMES ERSKINE *against* ROBERT GRAHAM.

No 201.

MR JAMES ERSKINE of Alva, one of the Senators of the College of Justice, being superior of certain lands in the county of Stirling affording a freehold-qualification, conveyed to a relation of his, a liferent of the superiority; and a charter of resignation was obtained from the crown, in favour of that person in liferent, and of his Lordship in fee.

A superior of land obtaining a charter of resignation in favour of another person in liferent, and of himself in fee, may, nevertheless, claim enrolment as a freeholder in virtue of his former investitures.

When this transaction took place, Lord Alva was enrolled among the freeholders of the county of Stirling, as proprietor of certain lands, which he afterwards sold. At the meeting, therefore, for electing a member of parliament on 6th July 1790, he claimed enrolment, as superior of the lands first mentioned, and for that purpose he produced his investitures, which had been completed before the giving away of the liferent-right.

To this claim it was objected by Mr Graham, one of the freeholders, that, by the resignation, the former investitures had been completely done away, and could not be the warrant of an enrolment. This objection was sustained by the freeholders.

But, after advising a petition and complaint for Lord Alva, which was followed with answers, replies, and duplies, the Court being clearly of opinion, that a charter of resignation in favour of the resigner himself, though burdened with a liferent in favour of another person, did not invalidate a claim of enrolment, founded on the former investitures,

The Lords found, That the freeholders had done wrong in not admitting Lord Alva, &c. and found expences due.

Nota, Before these proceedings, the liferenter had executed a renunciation of his right, and Lord Alva had obtained a new charter. This however, he

No 201. not being able to produce, but only an extract of it, the determination of the Court entirely rested on the validity of his original titles.

Act. *Abercrombie*.

Alt. *W. Robertson, et alii*.

C.

Fol. Dic. v. 3. p. 420. Fac. Col. No 156. p. 312.

. See M'Lean against M'Neil, 23d June 1757, *voce* SALE.

D I V I S I O N V.

Procedure in the Court of Freeholders.

S E C T. I.

Time of holding the Court.—Can Freeholders be compelled to meet.
—Quorum.—Calling the roll, and choice of Preses and Clerk.

THE Sheriffs having been irregular as to the time of holding Michaelmas head-courts, it was, by act 16th Geo. II. cap. 11. enacted, That every Sheriff should, at least 14 days before Michalmas, appoint a precise day for holding such court in the year 1753, causing the same to be intimated at all the parish-churches within the shire, upon a Sunday at least eight days preceding; and that the day so to be fixed, should be the anniversary for holding the Michaelmas head-court in that county, in all time to come.

1753. *December 20.*

M'KENZIE of Highfield *against* FREEHOLDERS of CROMARTY.

No 202.

A GENTLEMEN, who had duly lodged a claim to be enrolled as a freeholder of Cromarty, preferred a complaint, setting forth, That the anniversary Michaelmas meeting had not been held, so that his claim was not judged of, and praying the interposition of the Court; the LORDS dismissed the complaint as incompetent, they having no original jurisdiction in matters of enrolment. This seems then to be a great grievance without a remedy. See Kames's Law Tracts, v. 1. p. 320, and Principles of Equity, p. 57, v. 2. Third Edition. See APPENDIX.

Fol. Dic. v. 3. p. 428.