

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

No 255.
was granted,
it was found,
that the ob-
jection might
be removed
by his after-
wards pro-
ducing it in
the Court of
Session.

proceeds; for it is as essential to their validity, that the commissioners should be connected with the charter, as that he should connect himself with them by the disposition; 17th February 1767, Sir John Gordon, No 157. p. 8874.; 10th February 1781, Moodie, No 180. p. 8806.; 23d February 1790, Nisbet, No 231. p. 8855.

2do, The act 1693. c. 35. declares, 'That all sasines in favour of a dispoonee, different from the person to whom the original precept is granted, shall be null, unless the titles by which the former has right to it are deduced in the instrument.' Mr Proctor's sasine is therefore void, from its neither narrating the commission to Messrs Lyon and Dundas, nor stating that it was exhibited by his attorney to the Bailie. Indeed, independently of a statute, a Bailie, at common law, cannot give a valid infeftment, unless the attorney shew a complete right to the precept in the person of his constituent; Craig, l. 2. d. 7. § 8.; Stair, b. 2. t. 3. § 16.; which he certainly did not do in this case, merely by producing the disposition by Messrs Lyon and Dundas, without the commission empowering them to grant it.

Answered; *1mo*, The commission from Lord Strathmore formed no part of Mr Proctor's title of enrolment. It was at best merely a link in his progress, which it was sufficient to refer to in his claim, and which he was not bound to produce; 10th February 1781, Haldane, No 181. p. 8806.

2do, In all cases, the delivery of the precept of sasine, and of a conveyance to it *ex facie* regular, is a sufficient warrant to the Bailie to give infeftment; Stair, b. 3. t. 2. § 17.; Ersk. b. 2. t. 3. § 35.; Office of a Notary, p. 71. and 76.; and in practice nothing further is required. Nor can any harm arise from this; because, if it should afterwards appear that the conveyance of the precept flowed *a non habente*, the sasine will be void; while, on the other hand, to sustain this objection would strike at the rights of many landed proprietors.

The first only of these objections was stated before the freeholders; and they having sustained it, Mr Proctor presented a petition and complaint against their judgment, and, at the same time, produced an extract of the commission to Messrs Lyon and Dundass.

On advising the complaint, with answers for Sir David Carnegie, in which the objection to Mr Proctor's sasine was first made, a majority of the COURT thought the decision of the freeholders right on the first objection, which rendered it unnecessary to determine the second.

But on advising a reclaiming petition for Mr Proctor, with answers, the COURT altered their opinion, and thought both objections should be repelled. The commission by Lord Strathmore, (it was observed) forms no part of Mr Proctor's titles, although, in order to support them, he is no doubt bound to produce it, if required. But as a claimant may not have it in his power instantly to exhibit collateral or supplementary evidence of this sort, it is fixed by the case of Gordon, No 160. p. 8876, that if he should be rejected by the freeholders

for not doing so, he may remove the objection, by afterwards producing it in this Court.

No 255.

The objection to Mr Proctor's sasine, is neither sanctioned by the statute 1693, nor by practice.

THE COURT unanimously repelled the objections.

For the Complainer, *Lord Advocate Dundas, Solicitor-General Blair, Geo. Fergusson, Ar. Campbell, jun.* Alt. *H. Erskine, Hay, M. Ross, Gillies, Robertson Scott.* Clerk, *Home.*

Fol. Dic. v. 3. p. 434. Fac. Col. No 214. p. 505.

S E C T. IV.

Whether the Court of Session may admit Evidence not laid before the Freeholders.

1755. *January 17.*

Mr JOHN CALLENDER of Craigforth, Advocate, *against* Mr ROBERT BRUCE of Kennet, Advocate.

THE defender was enrolled in the roll of freeholders of the county of Stirling, at their Michaelmas meeting 1753.

The pursuer, one of the freeholders, complained, and made sundry objections against the decret of the Commissioners of Supply, dividing the valuation of the defender's lands from the valuation of the barony of Kerse, of which they were a part.

The defender admitted, that the Commissioners had not proceeded so regularly in the division of his valuation; but represented that, since giving in of the complaint, a General Meeting of the Commissioners of Supply had made a new division of the valuation of the whole barony, and offered to produce an extract thereof, by which it would appear, that none of the pursuer's objections, nor any other objection, lay against this new division, according to which the valuation of the defender's lands exceeded L. 400 Scots; that the defender had been enrolled without any objections offered to the Meeting against his enrolment, and that he was, at the time of the enrolment, as well as now, the Crown's vassal in lands of the valuation required by law; so that the Meeting did right, both formally and materially, when they enrolled him, and therefore he ought to continue on the roll.

Answered for the pursuer, That none are entitled to be enrolled, unless they produce to the Meeting legal evidence that their lands are valued at or above

No 256.

A freeholder having been enrolled on an erroneous division of the valuation of his lands, produced, with his answers, to a petition and complaint, an after division, which was unexceptionable. The Lords, however, ordered him to be expunged from the roll, reserving to him to lodge a new claim on the last division.