

Mrs. BAILLIE, Appellant.—*Romilly—Clerk—Robinson.*
 General BAILLIE, Respondent.—*Cranstoun—Jeffrey—Fuller-*
ton—Cockburn.

No. 9.

Divorce.—Held (affirming the judgment of the Court of Session,) that there were facts and circumstances proved against the appellant to establish adultery, and to infer decree of divorce.

THIS was an action of divorce, at the instance of General Bail-
 lie against his wife on the head of adultery, in which the sole
 question was, whether the fact alleged was proved? The Com-
 missaries, having found it established, decerned in terms of the
 libel; and the Court of Session, on the report of the Lordordi-
 nary, refused a bill of advocation. Mrs. Baillie having appealed,
 the House of Lords ‘Ordered and adjudged that the appeal be
 ‘dismissed, and the interlocutors complained of affirmed.’

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2^D DIVISION.

Bill-Chamber.

Lord Reston.

SPOTTISWOODE and ROBERTSON,—C. BERRY,—Solicitors.

(*Ap. Ca. No. 21.*)

J. GIBSON, Appellant.—*Romilly—Clerk—Thomson—W.*
Murray—J. A. Murray.

No. 10.

Sir WM. FORBES, Respondent.—*Gifford—Warren—Walker.*

Freehold Qualification—Jurisdiction.—Held (affirming the judgment of the Court of Session,) that it was not competent for a court of freeholders to entertain an objection, that the lands on which a claim for enrolment was made held burgage, and to verify which, it was necessary to revert to the titles anterior to those founded on by the claimant.

ON the 7th of December 1814, the Magistrates and Town Council of Edinburgh granted to Sir William Forbes a disposition of certain lands, and particularly of those of Greenhill, forming part of the Burrow or Common muir belonging to the City of Edinburgh. In virtue of the procuratory of resignation in this disposition, Sir William obtained a charter under the Great Seal from the Barons of Exchequer, the dispositive clause of which, so far as related to Greenhill, was in these terms: ‘Totas et integras illas partes et portiones postea descript. terrarum vulgo vocat. the Burrow muir, alias the Common muir, ad civitatem Edinburgensem pertinen. viz. Totam et integram villam et terras de Greenhill,’ &c. ‘jacen. infra parochiam de St. Cuthberts, et

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May 23. 1821. ‘ vicecomitatem de Edinburgh.’ In the quæquidem clause it was stated, ‘ Quæquidem totæ terræ aliaque supra disposit. per prius
 ‘ hereditariè personis postea mentionat. respectivè pertinuerunt,
 ‘ tent. per eos de nobis nostrisque regiis predecessoribus, immedi-
 ‘ atis legitimis earundem superioribus; viz. prædict. partes et
 ‘ portiones de lie the Burrow muir, seu Common muir, vocat.
 ‘ Greenhill, cum pertinen. ad Præpositum Magistratus et Muni-
 ‘ cipium dictæ civitatis de Edinburgh, pro usu communitatis dictæ
 ‘ civitatis, pertinuerunt; et per illos dicto Domino Gulielmo
 ‘ Forbes, Baronetto, ejus hæredibus et assignatis dispositæ fue-
 ‘ runt, secundum dispositionem, obligationem ad infeodandum per
 ‘ publicam tenuram, cum procuratoria resignationis continen., de
 ‘ data septimo die mensis Decembris millesimo octingentesimo
 ‘ decimo quarto.’

The tenendas clause was thus expressed: ‘ Tenend. et habend.
 ‘ dictas terras aliaque, cum pertinen. suprascript., per dict. Domi-
 ‘ num Gulielmum Forbes, ejusque prædict., de nobis nostrisque
 ‘ regiis successoribus, immediatis legitimis superioribus earundem,
 ‘ ut sequitur; viz. prædict. partes et portiones de lie the Burrow
 ‘ muir, seu Common muir, vocat. Greenhill, cum pertinentiis, in
 ‘ libera alba firma,’ &c.

The reddendo was in these terms: ‘ Reddendo inde annuatim
 ‘ dicto Domino Gulielmo Forbes, ejusque prædict., nobis nos-
 ‘ trisque regiis successoribus, immediatis superioribus earundem,
 ‘ respectivas divorias subsequen.; viz. pro dictis partibus et por-
 ‘ tionibus de lie the Burrow muir, seu Common muir, vocat.
 ‘ Greenhill, cum pertinen., summam unius denarii monetæ Scoticæ
 ‘ super fundum dict. terrarum de Greenhill, apud terminum
 ‘ Pentacostes annuatim, nomine albæ firmæ, si petatur tantum,
 ‘ cum talibus ulterioribus seu alteris divoriis (si tales sint) in
 ‘ cartis in favorem Præpositi Magistratum et communitatis
 ‘ civitatis Edinburgensis content.’

Sir William Forbes, after being duly infeft, claimed to be en-rolled as a freeholder of the county of Edinburgh; in support of which he produced the above charter, his sasine, and a certificate from the cess-books of the county, that the lands of Greenhill were valued at £103. 16s., and that the other lands conveyed to him made up the requisite valuation. Mr. Gibson, one of the freeholders, objected to the enrolment, on the ground that the lands of Greenhill held burgage, and that therefore Sir William had not the proper qualification. The freeholders having repelled the objection and enrolled Sir William, Mr. Gibson presented a petition and complaint to the Court of Session, praying to have Sir William’s name expunged from the roll. To this Sir William ob-

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jected that the complaint was incompetent, because, as he had produced a title *ex facie* good, and it was not possible to establish the allegation of the lands being burgage without going beyond the charter and reverting to the anterior rights, the freeholders could not listen to the objection. The Court having, on the 17th of May and 16th of December 1817, found 'the said complaint 'not competent,' and dismissed it,* Mr. Gibson appealed to the House of Lords, 1. Because the objection to Sir William's enrolment was of a nature that entitled the Court of freeholders, and the Court of Session as a court of review, to investigate and decide on its validity, even although the facts on which it is founded had not appeared *ex facie* of the title-deeds, seeing that it did not proceed on any allegation of a preferable right in a third party to the freehold estate claimed by Sir William, but on an allegation that no such freehold estate existed in the county of Edinburgh; and therefore they were bound to have inquired whether that fact was true, just as much as if it had been averred that the lands were locally situated in the county of Haddington, and not in that of Edinburgh; and, 2. Because the truth of the fact alleged in support of the objection to the validity of the freehold estate, viz. that it was burgage, was sufficiently apparent on the face of the titles produced by Sir William to the Court of freeholders to have warranted them in rejecting his claim, unless it had been established by better and further evidence.' In support of this, he referred chiefly to the description of the lands, which showed that they were part of the Burgh muir, and belonged to the city of Edinburgh,—and to the reddendo, which consisted partly of burgage services. To these pleas Sir William answered, That the lands were described as lying within the parish of St. Cuthberts and county of Edinburgh,—were stated to be held blench of the Crown,—were valued in the cess-books, so that, *ex facie* the title was good,—and consequently the truth of the allegation that they held burgage could not be instructed without reverting to the anterior titles, which could not be competently done in the Court of freeholders. The House of Lords 'Ordered and adjudged that the appeal 'be dismissed, and the interlocutors complained of affirmed.'

Appellant's Authorities.—Dunbar, Feb. 26. 1745, (8844, and Elch. No. 36. M. P.); Scott, Mar. 3. 1753, (8627); Campbell, Feb. 5. 1760, (7783, Aff.); Stewart, July

* See Fac. Coll. 1815-1819, No. 144, where it is stated that the Judges, with one exception, held that any inquiry into the nature of the holding in this shape was incompetent.

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Respondent's Authorities.—Burn, Feb. 17. 1779, (8852); Adam, July 4. 1809, (F. C.) Kibble, June 16. 1814, (F. C.)

J. CAMPBELL,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 22.*)

No. 11. Sir WILLIAM FORBES, Appellant.—*Gifford—Warren—Walker.*
 J. GIBSON, Respondent.—*Wetherell—Thomson—Grant—Fullerton—Murray.*

Process—Title to Pursue.—1. Whether an action of reduction of the titles of a freeholder, in order to found an objection to his enrolment, is competent after the lapse of the period specified in the 16th Geo. II. c. 11.—2. Whether a freeholder, merely as such, has a title to insist for reduction of the titles of another freeholder. Held in the affirmative by the Court of Session, but remitted for reconsideration.

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2^D DIVISION.
 Lord Pitmilley.

AFTER the petition and complaint mentioned in the preceding case had been dismissed as incompetent, and more than four months had elapsed from the period of the enrolment of Sir William Forbes as a freeholder of the county of Edinburgh, in virtue of the titles there specified, Mr. Gibson brought an action of reduction, the summons in which was at his instance, as ‘one of the freeholders electors of a commissioner to represent and serve in Parliament for the county of Edinburgh or Mid Lothian, and as such standing upon the roll of the said freeholders, and so having a substantial interest to prevent all persons not possessing the qualifications required by law from being enrolled on the said roll of freeholders.’ After calling for production of the charter in favour of Sir William, and the instrument of sasine thereon, and libelling various grounds of reduction, the principal of which was, that the holding had been unwarrantably altered from burgage to blench, he concluded, that ‘Therefore, and for other reasons to be proponed at discussing the said charter called for, with the signature and precept on which the same proceeded, and infestment thereon, with all that has followed or may follow upon the same, ought and should be reduced, rescinded, retreated, cassed, annulled, discerned and declared, by decree of our Lords of Council and Session, to have been from the beginning, to be now, and in all time coming, void and null, and of no avail, strength, or effect