

1745. July 18. FREEHOLDERS OF ROSS-SHIRE *against* MONRO of Culcainn.

No 125.

A wadset found to be proper, so as to entitle to vote, though it contained no power to the wadsetter to call for his money.

MONRO of Culcainn stood upon the roll of freeholders for the county of Ross, in virtue of a disposition to the superiority of certain lands granted to him by Monro of Foulis his father, redeemable for 1000 merks.

*Objected* to his title; That this was an elusory right created to raise up a vote, and besides could give no vote, as being an infeftment in security for money, and not a proper wadset; for there was no power in the disponee to require the money. A wadset was a pledge; and here there was no debt which a pledge could secure, and so the right being no wadset at all, could not be called a proper or improper one.

THE LORD ORDINARY, having advised with the Lords, repelled the objection; and, on a petition, the LORDS adhered.

*Pet. W. Grant.*

*Fol. Dic. v. 3. p. 416. D. Falconer, v. 1. p. 122.*

\*\*\* A similar decision was pronounced, 17th January 1755, Galbraith *against* Cunningham, No 51. p. 8644.

1747. June 24.

FREEHOLDERS of the Shire of WIGTON *against* STEWART of Barvennan and HAY of Balcarry.

No 126.

Lands held by a man, excluding his heirs and assignees to return on his death to his author, found to entitle to vote.

COLONEL JAMES STEWART of Barvennan was infeft in those lands, ' tam in feodo quam in vitali redditu (heredes suos et assignatos excludendo) quo morte deficiente Comiti de Galloway vel Alexandro domino Gairlies, ejusque heredibus et successoribus redire et assignatis quibuscunque,' with power to him to burden the estate to the extent of L. 400 Sterling; and Captain Alexander Hay of Balcarry was infeft in the same manner, with a return to Sir Thomas Hay of Park, but without any power of burdening.

*Objected* to these titles to stand on the roll of freeholders for the shire of Wigton, that they were not liferents, and the fees were nominal and fictitious.

THE LORDS repelled the objection.

*Act. A. Macdowal*

*Alt. Lockhart.*

*Fol. Dic. v. 3. p. 415. D. Falconer, No 192. p. 257*

1748. June 7. HOME-CAMPBELL and KER *against* HOMES of MANDERSTON.

No 127.

Notwithstanding an adjudication,

SIR JOHN HOME elder and James Home younger of Manderston stood on the roll of freeholders for the shire of Berwick, and no objection was made to

their title by complaint to the Lords of Session before 1st December 1743, as directed by act 16th of the present King; but there having been an adjudication led of their estate 27th February 1733, on which infestment followed 1st May 1735, the legal whereof therefore appeared *ex facie* to be expired in February 1743, it was moved in the Court of Freeholders to have them expunged the roll at Michaelmas 1747, upon this alleged alteration of their circumstances; and they being continued, a complaint was preferred by Alexander Home-Campbell and George Ker of Nisbet to the Lords of Session.

*Answered*, The last roll as it stood before December 1743, is declared by the act of Parliament to be the roll of constituent members, which the freeholders had no power over; it having only been competent to them to apply to the Lords of Session for correcting it before that term, which in this case was not done, and afterwards they could only proceed on alteration of circumstances, and there was no alteration since December 1743, as the adjudication was prior thereto, upon which no possession had ever been attained.

*Replied*, There had been an alteration since enrollment by expiration of the legal, which warranted the freeholders to proceed; as after expiration, the right of voting is competent to the adjudger.

*Observed* on the Bench, That by the statute the freeholders could not remove any standing on the roll last made up, which was declared to make the roll of constituent members for the first Court, but behoved, if any stood there without title, to apply in due time to the Lords of Session: And also, that the act 1681, in giving the vote after expiration of the legal to the adjudger, behoved to be understood of adjudgers in possession; as possession is necessary to intitle to a vote, and though a legal may seem to be expired, it is impossible, so long as possession is not had upon the adjudication, to know what reasons there may be for finding it still open.

THE LORDS repelled the objection, and found expences due.

*Act. R. Craigie.*

*Alt. Lockhart.*

*Fol. Dic. v. 3. p. 415. D. Falconer, v. 1. No 254. p. 341.*

1754. March 6.

CAMPBELL *against* STIRLING.

A wadset of superiority comprehending a property of a small part of the lands, where the casualties were renounced, and the rents and feu-duties warranted to extend at the date, to a certain sum, nearly equal to the interest of the money, was found a proper wadset so as to entitle to a vote.

*Fol. Dic. v. 3. p. 416.*

\* \* \* This case is No 8. p. 2439, *voce* COMMISSIONERS of SUPPLY.

No 127.

the reserver is entitled to continue upon the roll during the currency of the legal; and even after it is expired, the adjudger cannot be admitted until he obtain possession.

No 128.