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if he had left the meeting when his name was expunged, or neglected the proper steps at that period, he is entitled, within four months, to come into this Court, and to prove his title to be continued or replaced on the roll. This is merely a question of enrolment; the question, whether his vote ought to be counted or not for the election of Preses and Clerk, or of their Representative, not being *hujus loci*, but competent only before the Committee of the House of Commons. The blank in the oath ought to be filled up by the party himself, not by the person who calls the roll, who has no power to exercise his judgment about the matter, but must call the roll as it stands. If the party acts improperly in filling up this blank, or swears falsely, he will be liable in the consequences of such conduct. A person standing on the roll is not obliged to say that he has all the lands which he had twenty or thirty years ago, but that he has all for which he claims, *i. e.* maintains his right of voting; or, in other words, of continuing on the roll; and to this there can be no opportunity of contradiction till after the meeting is constituted.

The Court (25th February 1803) found, that John Gordon ought not to have been expunged from the roll of freeholders; therefore, ordained him to be replaced; and found Patrick Heron and Major-General Goldie liable in expenses.

To which judgment the Court adhered, (10th March 1803,) by refusing a reclaiming petition, without answers.

For Gordon, *H. Erskine, J. Clerk, Arch. Campbell, jun.*
 Alt. *Solicitor-General Blair, Hay, Williamson, Catbcart.*
 Clerk, *Menzies.*

Agent, *Tho. Grierson, W. S.*
 Agent, *And. Macwhinnie.*

F.

Fac. Col. No 90. p. 197.

 S E C T. V.

Freeholders must be infest on proper Titles, and their infestments recorded, year and day before Enrolment.

1755. *January 17.*JOHN BUCHANAN of Carbeth *against* FREEHOLDERS of STIRLINGSHIRE.

No 165.

It is sufficient that the infestment entitling to a vote, be re-

A COMPLAINT being made to the Court of Session by John Buchanan of Carbeth against the freeholders, for sustaining the following objection as sufficient to bar him from the roll, viz. That his infestment was not registered a year before the test of the writ for calling a new Parliament. It was *answered*, That

the objection was justly sustained, being founded on the express words of the statute 12th of Queen Anne.—*Replied*, The clause in the statute upon which this objection is founded, was indirectly altered by the statute 16th of the present King ; by which every purchaser standing infest year and day, is entitled to be put upon the roll ; and if he be upon the roll, he undoubtedly is entitled to vote.

THE LORDS repelled the objection, and found it was not necessary that the complainer's infestment should be dated and registered a year before the test of the writ for calling the Parliament ; and it was sufficient to be dated and registered a year before the day upon which he craved to be enrolled.

Fol. Dic. v. 3. p. 422. Sel. Dec. No 79. p. 104.

* * * This case is reported in the Faculty Collection :

AT a meeting of the freeholders of Stirlingshire for choosing a representative to Parliament, John Buchanan of Carbeth claimed to be enrolled in the roll of freeholders entitled to vote ; partly as being the Crown's vassal in the lands of Little Carbeth and others ; and partly as having right to certain feu-duties payable out of the lands of Bothkennar.

It was *objected* by William Cuningham of Ballendalloch, one of the freeholders, That he could not be enrolled, *imo*, Because the date of the writ for calling the Parliament was 9th April 1754, and the instrument of sasine in favour of the claimant is only registrated 27th April 1753, which was not one year before the date of the writ ; and, by an act of the 12th of Queen Anne, it is statued, ' That no conveyance whereupon infestment is not taken and registrated one year before the test of the writ for calling a new Parliament, shall, upon objection made in that behalf, entitle the person so infest to vote or be elected.' *2do*, That a right to the feu-duties of Bothkennar, being neither a right to the property or superiority of the lands, did not entitle to vote.

A majority of the freeholders sustained both the objections. Mr Buchanan complained to the Court of Session, and *pleaded* in answer to the first objection, That by an act of the 16th of his present Majesty, it is enacted, ' That no purchaser shall be enrolled till he be publicly infest, and his sasine registrated one year before his enrolment.' From which it is evident, that it is only necessary that the instrument of sasine be registrated one year before the enrolment be demanded, which it was in this case ; and as *posteriora derogant prioribus*, the act of the 12th of Queen Anne is in so far repealed.

Answered for William Cuningham, That the maxim *posteriora derogant prioribus* only takes place where the two things enacted by different statutes are incompatible : But here they are not ; for the clause in the latter act respects the right of voting and being elected, and the clause in the first act respects only the privilege of being enrolled ; and had not another objection stood in the way, the freeholders would have enrolled the complainer at the said meeting, after the election of the Member of Parliament was over ; and though he had been enrolled

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corded a year before application is made for being enrolled, altho' not within year and day of the test of the writ for calling a new Parliament.

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before the election, he could not have voted, because the act of the 12th of the Queen barred him from that privilege: And it is the less to be supposed that the foresaid clause of the last act repealed the said clause of the former act, because one clause of the said former act is expressly repealed by the act of the 16th of the King, which is a virtual confirmation of all the other clauses.

Replied for the complainer, That the clause of the act of the 16th of the King implies a repeal of the clause of the 12th of the Queen, upon which the objection is founded: For all that is required by the act of the 16th of the King is, That the claimant be year and day infest before he be enrolled; and so soon as he is enrolled, he is entitled to vote, as appears from other parts of the said statute. Now suppose that the writ for calling a Parliament bore date the 20th September, and that a freeholder was infest the 25th day of September of the year preceding, and duly entered his claim for being enrolled two kalendar months before Michaelmas, and appeared at the Michaelmas meeting and was enrolled, and the meeting for election was upon the 10th of October thereafter; it is obvious that such freeholder's name behoved, by the act 16th of the King, to be called, and his vote marked in every question during the course of the election, the act of the 12th of the Queen notwithstanding; and therefore that act is in so far repelled.

The arguments upon the second objection were the same with those mentioned in No 52. p. 8647.

'THE LORDS repelled the first objection, and found that it was not necessary that the complainer's infestment should have been dated and registrated one year before the test of the writ for calling the Parliament; but that it was sufficient his infestment was dated and registrated one year before the day upon which he craved to be enrolled. But they sustained the second objection, and therefore dismissed the complaint.'

Act. And. Macdonwall, Ja. Dundas & Bruce. Alt. Lockhart, And Pringle, & Jo. Grant.
Clerk, Forbes.

B.

Fac. Col. No 129. p. 192.

1755. January 17.

RALPH DUNDAS, Younger of Manner, *against* CRAIG and FREEHOLDERS of STIRLINGSHIRE.

No 166.

Infestment to an eldest son, reserving to the father all the power of the property, is not a good qualification to vote for a Member of Parliament; nor will it be

RALPH DUNDAS, younger of Manner, with the view to an approaching election of a Member to serve in Parliament, was infest by his father in lands of a sufficient valuation; but reserving to the disponder his liferent, and a power to alien or burden the lands at pleasure. This infestment was expedite more than year and day before the election. But this nominal fee appearing doubtful, the father, about a month before the election came on, discharged and renounced the whole reservations; and this deed was instantly put upon record.