

No. 82. donatars; the adjudication devolved by succession to the heirs of Jean; so that even upon the supposition that Alexander Waddel should be retrocessed, it could not be done till the pursuer had made up her titles to her mother for that purpose. The adjudication being accordingly fully vested in the pursuer, a reconveyance to James Waddel was unnecessary; for as she was in the radical right, the bare consent of Waddel, who had the interest, was a sufficient mandate for insisting in the sale. The present case was precisely similar to one which had been frequently stated: When a person, for instance, vested in the feudal title, but who had no right to the subject, disposed it with the consent of the true heir; which always had been held a valid conveyance.

The Lords adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Kames*.  
Clerk, *Gibson*.

For Waddel, *A. Wight*.  
For Laurie, *D. Dalrymple*.

*Fac. Coll. No. 68. p. 202.*

---

1771. *December 13.*

ADAM WILSON, Merchant in Dundee, and Others, *against* DAVID JOBSON, Writer, in Dundee.

No. 83. An action sustained at the instance of a majority of private individuals, who had united themselves for religious purposes into a society called the Antiburger Associate Congregation of Dundee.

\* \* This case is No. 5. p. 14555. *voce* SOCIETY.

---

1774. *November 29.*

MAJOR RALPH DUNDAS *against* WILLIAM MURRAY of Touchadam, and Others.

No. 84.

A very remote substitute in a tailzie is entitled, at common law, to pursue a declarator of irritancy against the heir in possession.

\* \* This case is No. 48. p. 15430. *voce* TAILZIE.

---

1779. *February 4.*

GRAHAM *against* GRAHAM.

No. 85.

A party having made up a title by general service, as heir of tailzie to his brother, (the heir last infert,) brought a reduction of a tack and removing from the lands on various grounds. Objected by the defender, The pursuer has no title to carry on this action; the property of the lands under lease is still *in*

*hereditate jacente* of the heir last infert, and cannot be vested in the pursuer without a special service. The Court found, That the pursuer's general service is no sufficient title to pursue this action.

No. 85.

*Fac. Coll.*

\* \* This case is No. 9. p. 3186. *voce* DEATH-BED.

1782. June 23.

COWAN and MACGUFFOC *against* The MAGISTRATES and COUNSELLORS of the Burgh of WIGTON.

An action having been brought by Cowan and Macguffoc, as burgesses paying scot and lot, and exercising trades within the burgh, for setting aside the election of Magistrates and Counsellors at the preceding Michaelmas; their title to carry on such action was debated in the following manner:

Pleaded for the defenders: The right of enjoying offices within a burgh, being attended with a degree of rank and power, and a species of temporary freehold, is without doubt, at common law, the subject of litigation before the Court of Session. But this litigation can be maintained by those only who claim a right to these offices, or at most by those who have voted in favour of particular persons, and have an interest that their vote should be made effectual; it being a general and established maxim in law, that no man can have any title to bring an action for depriving another of an office, or other matter of right, to which he can have no manner of claim. The Legislature indeed sometimes sees it necessary to make certain matters the subject of popular action, or to infringe the rule to a certain extent, by indulging action to persons of a particular denomination, as in questions touching elections within burghs, to be afterwards more particularly stated. But this takes place by virtue of special enactments, which operate only in the cases specially provided for. On these principles the defenders contend, that the present prosecution for annulling an unanimous election of Magistrates and Counsellors, not brought by any person laying claim to these offices, or having a vote in the election, is utterly inept and incompetent.

Farther, by statute 7th Geo. II. it is declared lawful for Magistrates and Counsellors, apprehending wrongs to have been committed at an annual election, to bring an action before the Court of Session, for rectifying such wrong, within eight weeks after the election. By statute, 16th of the same King, the same power is given to any constituent member of the meeting for election, or of any meeting previous thereto, and may be exercised by way of summary complaint to the Court of Session, within two kalendar months of the election. By these statutes, the Legislature has established a code for the regulation of abuses in the matter of election in burghs, has accurately defined the mode of prosecution, and the persons having right to pursue; and from thenceforward these abuses must

No. 86.

An ordinary burges may insist in an action for setting aside an election of Magistrates.