

No 112. 1780. December 21. BOYES *against* HAMILTON.

CAMPBELL had been enrolled in 1779, on the lands of Monkcastle, belonging to the Earl of Eglinton, which had formerly belonged to the Abbey of Kilwinning, elected into a temporal lordship in favour of the family of Eglinton. No complaint had been made of this enrolment; but at Michaelmas 1780, Mr Boyes claimed to be enrolled, partly on these lands of Monkcastle, to which he derived right from the Duke of Hamilton, whose family were the church vassals, and had them contained in their Crown charters for above a century. The freeholders rejected Mr Boyes's claim, in respect that Mr Campbell stood already enrolled on these lands. On a complaint, the LORDS found they had done wrong, and ordered Mr Boyes to be enrolled.—See APPENDIX.

Fol. Dic. v. 3. p. 414.

No 113. 1781. February. HAMILTON *against* BOGLE.

WHERE a freehold qualification depended on the old extent, it was argued, that a very small dismemberment, for the purpose of straightening marches, must be fatal, though the ground received be equal in quantity and quality; for, since the old extent of the freehold was only forty shillings, the smallest alteration might reduce it below the legal standard, and no division of the old extent can now be made to ascertain the truth. THE COURT repelled the objection, and their judgment was approved of by a Committee of the House of Commons.—See APPENDIX.

Fol. Dic. v. 3. p. 415.

1781. March 7.
ROBERT MUIR and CHARLES DALRYMPLE *against* GILBERT M'ADAM.

No 114.
A person who had granted a trust disposition of his estate for behoof of his creditors, found not entitled to vote. The court was afterwards found in the case which follows.

AT the meeting for electing a Member of Parliament for the county of Ayr, in 1780, it was *objected* by a freeholder to the title of Mr M'Adam of Merkland, then standing upon the roll, That he had divested himself of the lands on which he was enrolled, by a trust-deed, containing procuratory and precept, in favour of certain gentlemen, for behoof of his creditors. By doing so, his right became precarious and extinguishable at the will of another, and consequently ceased to entitle him to a freehold qualification.

This challenge was brought before the Court of Session.

Pleaded for Mr M'Adam; A trust conveyance does not absolutely divest the granter, although infestment has followed thereon. At any time before sale of the subjects, he may redeem, by payment of the debts secured by the trust, in

the same manner as a debtor whose lands are adjudged ; and his right is completely restored, by renunciation of the trustees, and without new infeftment.

No 114.

In this case no infeftment has followed on the trust-right ; neither was there any evidence, when the objection was made, that either the trustees or creditors had accepted thereof. It was, therefore, no more than a mandate to sell, which no person ever conceived to be fatal to a qualification.

2do, Mr M'Adam's right to vote is ascertained by the statute 1681, cap. 21. by which it is provided, ' That no person infeft for relief or payment of sums, shall vote, but the granters of the said rights.'

Pleaded for the Objectors ; It has been decided, in numberless instances, that a disposition with procuratory and precept, did incapacitate the granter from voting ; and there is no distinction in law arising from the purposes of such grants.

If the trustees had executed the procuratory, or obtained confirmation of the infeftment taken on the precept, they would have become the Crown's vassals, and the truster's right would have resolved into a reversion, which was personal, and would be taken up by his heir, by general service. Nothing prevents the trustees from taking these steps at any time.

2do, In rights for relief or security of sums of money, although the incumbrance may render the property useless, or of little value to the proprietor, the radical right still remains in him. In trust dispositions, the granter's right may, in a moment, be totally annihilated ; and, in the present instance, it is already entirely dissolved, the trustees having sold the subjects at a price inadequate to the payment of the truster's debt.

THE LORDS " sustained the objection, and ordered the respondent to be expunged from the roll."

Act. *George Fergusson.*Alt. *James Boswell.**Fol. Dic. v. 3. p. 417. Fac. Col. No 50. p. 88.*1786. *March 11.*ROBERT DONALDSON and Others *against* SIR LUDOVICK GRANT.

AT a meeting of the freeholders of the county of Nairn, for electing a Member of Parliament, it was *objected* to one of them, that he had granted to a trustee, for behoof of his creditors, a disposition of the lands on which he stood enrolled, containing procuratory of resignation and precept of sasine, in virtue of which precept the trustee was infeft, full powers being thus conferred on the disponee to enter into possession, levy the rents, sell the estate, and apply the proceeds towards payment of the debts ; and, in support of the objection, it was

No 115.
A trust conveyance for behoof of creditors does not take away the right of voting at the election of a Member of Parliament.