

thods, that her husband, as in the case of Ord against Paterson, being, after her demise, excluded from possessing the lands, was, at the same time, released from the duties he formerly owed.

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Our ancient law has not, in this respect, suffered any essential alteration. By act 1681, the right of being enrolled as a freeholder is communicated to husbands, for "the *freeholds* of their wives, or having right to a liferent by the "courtesy." And by 12th Queen Anne, every husband indiscriminately is allowed to vote, if his wife is either an heiress, or the *proprietress* of a freehold of the requisite valuation, holding of the King or Prince. The latter part of this clause was thrown in to prevent the creation of occasional votes on the eve of an election; as it was foreseen, that, without a limitation of this sort, life-rent, or defeasible estates, would be given to wives, in order to qualify their husbands to vote.

It was farther *urged* for Mr Sandilands, That his wife, with respect to an estate descending to her from her father, though in consequence of a deed *inter vivos*, was to be considered as an heiress. This argument, however, was un-animously disregarded by the Court; it being evident, that Mrs Sandilands, in the course of succession, would have been entitled only to a partial interest in the lands.

THE LORDS dismissed the complaint, and found expenses due.

For the Complainer, *Dean of Faculty*.

Alt. *Wight*.

C.

Fol. Dic. v. 3. p. 426. Fac. Coll. No. 250. p. 383.

1786. July 26. HENRY ERSKINE KNIGHT *against* GEORGE ROBINSON.

Mrs ERSKINE, spouse to Henry Erskine Knight, was, in virtue of marriage articles, entitled, as heir of provision, to succeed to her father in the lands of Pittodrie, to the exclusion of a brother by a former marriage.*

Her father, however, having made out a disposition in her favour, she did not complete her titles after his death by a service, but executed the procuratory contained in the disposition, and afterwards obtained a charter of resignation from the Crown.

In virtue of these investitures, and without founding on the marriage-contract, Mr Erskine Knight was enrolled, during his wife's life, as a freeholder in the county of Aberdeen.

At the meeting for electing a Member of Parliament, in 1786, George Robinson, a freeholder, objected to Mr Knight's continuing on the roll. Mrs Knight was then dead; and although she had left children, yet the rights formerly produced being those of a singular successor, her husband, it was con-

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The freeholders having struck off the roll the name of a person, enrolled in right of his wife, during her lifetime, as it appeared from the investitures, that she was only a singular successor, and was since dead; the Lords, on a complaint, allowed the complainer to produce evidence in the

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Court of Session, by a deed of settlement, that his wife, being an heiress of provision, he had right, as tenant by the courtesy, to continue on the roll.

tended, had no right to the courtesy, nor, consequently, to the privileges of a freeholder.

The proceedings of the freeholders, who sustained the objection, having been brought under review in the Court of Session, it was agreed, that Mr Knight, on exhibiting the marriage-contract before mentioned, might be readmitted to the roll. But the question was, whether a new claim was necessary.—For George Robinson, the objector, it was

Pleaded, Mr Knight's qualification was twofold ; *first*, In right of his wife, during her life ; and, *2dly*, In his own right, as tenant by the courtesy ; which last qualification arose after his wife's interest in the estate had terminated, and depended on circumstances altogether different. The claim on which he was admitted to the roll, as well as the writings then produced, was solely applicable to the former state of his titles, while the existence of his wife's brother, by a former marriage, gave every reason to suppose, that a demand on his part to be enrolled, as the husband of an *heiress*, would have been unwarranted and unjust.

The judgment of the freeholders, therefore, was perfectly unexceptionable ; nor can the Court of Session, on account of writings now referred to, and which were not so much as mentioned to the freeholders, pronounce a contrary decision. For though collateral or explanatory evidence may be adduced in the Court of Review, it never can be thought that such documents as are absolutely necessary for constituting the freehold qualification itself, may be there exhibited for the first time ; Sir John Gordon against Fraser, affirmed on appeal, *infra, h. t.*

Answered for Mr Knight, If a husband has been enrolled during his wife's life, in virtue of her infertment, his right as a freeholder must subsist after her decease, in consequence of the courtesy, unless it can be shown, that the peculiar circumstances of the case have created a disability. There is no necessity for a new claim ; which, however, would be required, if his right of voting were understood, at the two different periods, to be essentially different.

Hence the only proper object of discussion here is, whether the objector has produced sufficient evidence to support the proceeding of the freeholders, in striking Mr Knight off the roll ; and it is evident that he has not. As the method in which Mrs Knight completed her titles did not, in the least, derogate from her character of an heiress ; so a reference to those titles was far from affording satisfactory proof of her being a singular successor. The slight presumption, for it is no more, which this circumstance occasioned, may, of course, be competently obviated, by proper evidence, in the Court of Review. The case is the same as if it had been asserted, that Mr Knight had no right to the courtesy, because no children had existed of the marriage ; an allega-

tion which, though credited by the freeholders, Mr Knight would have been allowed to refute by a proof in the Court of Session. No 189.

THE LORDS, by a considerable majority, found that a new claim was unnecessary.

For Mr Knight, *Lord Advocate, Buchan-Hepburn, Geo. Fergusson.*
Alt. Dean of Faculty, Wight.

G. *Fol. Dic. v. 3. p. 426. Fac. Coll. No. 289. p. 444.*

* * * See, in the Appendix, the case of Lord Woodhouselee, on the subject of this Section, decided in the Summer Session 1804.

SECT. VIII.

Splitting the Superiority.

1741. *June 9.* Sir JOHN MAXWELL *against* M'MILLAN.

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FOUND, That a superior could not, without consent of his vassal, split the superiority among more superiors. See SUPERIOR and VASSAL.

Fol. Dic. v. 3. p. 426. Kilkerran, (SUPERIOR and VASSAL.) No 4. p. 529.

* * * C. Home reports this case.

THE question betwixt these parties resolved in a neat point of law, to wit, whether the superior of lands holding blench, could split or divide his right of superiority without consent of the vassal?

Sir John the vassal brought a declarator, to have it found and declared, That the superior could not; and *pleaded*, That it has been universally held by our lawyers, as well ancient as modern, that a superiority is indivisible. It is laid down as a maxim in our feudal law, *non cogitur vassalus, pro uno feudo duas fidelitates facere*, see *lib. 2. tit. 55. § 1. Cujacius, Book I. De feudis. Craig, lib. 2. Dieg. II. § 18.* And that it arose from this principle, that, when heirs-portioners succeed in the heritage of the ancestors, superiorities and their casualties are not divided, as the other particulars of the heritage, but the eldest portioner alone succeeds without any division; for this very reason, lest the condition of the vassal be rendered worse, should the superiority be split among several heirs-portioners. If it were allowed to multiply superiors, numberless inconveniences would arise. A sub-vassal is liable to many casualties, from the accidents which befall his immediate superior, his death, delinquencies, &c. If he is subjected to twenty superiors instead of one, he must be involved in as