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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of the Queen barred him from that privilege: And it is the less to be supposed that the foresaid clause of the last act repealed the said clause of the former act, because one clause of the said former act is expressly repealed by the act of the 16th of the King, which is a virtual confirmation of all the other clauses.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.

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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.

' THE COURT was unanimous that Mr Dundas's infeftment being a title of property *figura verborum* only, could *per se* afford no qualification ; that he had a good qualification from the date of the registration of the renunciation, but that this qualification could not be sustained, not having subsisted a year before the election.'

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validated by
a renuncia-
tion of these
powers,
granted with-
in a year of
the election.

Fol. Dic. v. 3. p. 423. Sel. Dec. No 78. p. 103.

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

AT the meeting for electing a representative to Parliament for the county of Stirling, held 17th May 1754, Ralph Dundas younger of Manner presented his titles, and craved to be enrolled amongst the freeholders entitled to vote.

William Craig of Dalnair, one of the freeholders, *objected*, That he could not be enrolled ; because, although his charter was dated in December 1752, and his sasine dated the 12th, and registered the 18th January 1753, yet the charter reserved a faculty to John Dundas of Manner, the claimant's father, to alienate or burden the lands disposed without the claimant's consent ; and that the renunciation of that faculty was only dated and registered in April 1754 ; whereas, by the acts 12^{mo} Annæ, and 16^{to} Geo. II. it ought to have been dated and registered at least one year before the day of election : This objection was sustained by a majority of the freeholders.

Ralph Dundas complained to the Court of Session, and *pleaded*, That the acts 12^{mo} Annæ, and 16^{to} Geo. II. did not exclude him from being enrolled ; for it is only required by the first of these acts, that infeftment be taken, and the sasine registered one year before the test of writs for calling a Parliament ; and, by the second, one year before the enrolment ; and that his sasine had been registered much more than one year before the test of the writs, or day when the enrolment was claimed ; and, as these acts were correctory laws, derogating from what was formerly the right of freeholders, upon their being infeft, they could not be extended beyond the letter of them, but behoved to be strictly interpreted ; and therefore could not be construed as to require, that, where a renunciation of reserved powers was necessary for completing the title to vote, such renunciation behoved to be dated and registered one year before the enrolment.

It is true, that, by another clause of the act 12^{mo} Annæ, it is provided, That no redeemable rights, except proper wadsets, adjudications, or apprisings, allowed by the act 1681, shall entitle to vote ; but, so soon as the right of redemption is extinguished, the objection founded on this clause of the statute is removed, it not being required that an year should run between the extinction of the power of redemption and the enrolment ; and therefore, if one were infeft in lands redeemable betwixt and a certain term, or upon a charter of adjudication which has a legal term for redemption, so soon as these terms are past, the persons must be entitled to vote, supposing him formerly year and day infeft ; because there is nothing in the act to restrain him : And, in the same way, so soon as the person, who has reserved powers over the fee, dies, or dis-

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charges these powers, the fiar is entitled to be enrolled, and to vote, providing that an year has run from the registration of his infeftment.

And as the words of these statutes do not affect the complainer, so neither does the intention of them, which was to prevent an undue multiplying of votes on the approach of an election, of which there can be no hazard, by allowing a father, or other person, to renounce their reserved powers in favour of the fiar.

Answered for William Craig, That the objection is founded on the words of the statute 12mo Annæ; for it is thereby enacted, ' That no conveyance or right whatsoever, whereupon infeftment is not taken, and sasine registered one year before the test of writs for calling a new Parliament, shall, upon objection made in that behalf, entitle the person so infeft,' &c. Now, it is admitted, that the complainer's charter and infeftment by themselves gave him no right to be enrolled; it was the renunciation alone that could give him such a title; but he, not being infeft year and day upon that title, when he claimed to be enrolled, had no right to that privilege. The present case is quite different from that of an infeftment upon an adjudication, the legal of which has expired a short time before the adjudger claims to be enrolled; for the expiry of the legal arises from the nature of the right itself, and not from any new right or conveyance.

And, as the intention of the statutes was to prevent an undue multiplying of nominal votes upon the approach of an election, the complainer was, by the intention, as well as the words, justly excluded from the roll: Otherwise every man might create as many votes as his valuation would admit, by granting dispositions with reserved powers, and executing and producing renunciations of these powers on the very day of election.

' THE LORDS sustained the objection made to the qualification of the complainer, and dismissed the complaint.

Act. And. Macdowall, J. Dundas et Bruce. Alt. Lockhart et J. Grant. Clerk, Forbes.
B. Fac. Col. No 127. p. 186.

No 167.

1760. February 5. CAMPBELL and GRAHAM against MUIR.

OBJECTED to a claimant, That his infeftment having proceeded on a disposition granted by an heir of entail, who was strictly prohibited from alienating the lands.—*Answered*, A conveyance from an heir of entail, however strictly followed, is good against all except the substitutes; and it is *jus tertii* to any to plead in their right.—THE COURT repelled the objection.

Fol. Dic. v. 3. p. 424.

* * * This case is No 8. p. 7783.