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the possession is continued, and that there is no longer an obligation to convey to another; and the heir's giving a consideration for the discharge and obligation, is no admission that it is a new right.

To the *third*; That it is sufficient if the defender's right be properly established, and cannot be lawfully destroyed or impaired. The law presumes not any man's fraud; *quæ contra bonos mores sunt, nec facere nos posse credendum est.*

“ THE LORDS repelled the objections to the defender's qualification, and found, That he is sufficiently entitled to continue on the roll of freeholders for the shire of Selkirk; and therefore dismissed the complaint.”

Act. *Montgomery.*Alt. *Ferguson.*Clerk, *Forbes.*

S.

Fol. Dic. v. 3. p. 425. Fac. Col. No 149. p. 222.

1781. February 10.

MOODIE *against* BAIKIE.

No 180.

A person claiming to be enrolled as a freeholder, in the character of apparent heir, produced his ancestor's sasine, but not the charter upon which the sasine proceeded. His claim was rejected.

MR MOODIE, claiming to be enrolled as a freeholder in the county of Orkney, in the character of apparent heir, produced his ancestor's sasine, but not the charter upon which the sasine proceeded.

To this production, Mr Baikie

Objected: By statute 16th Geo. II. no person can be admitted to the roll of freeholders, as apparent heir, who does not exhibit a complete feudal title, in the person of the ancestor. An instrument of sasine is merely a relative writing, to which no credit can be given, if unsupported by the charter or other deed to which it refers.

This objection was sustained by the freeholders. Mr Moodie complained to the Court of Session, and there exhibited the predecessor's charter. But

“ THE COURT dismissed the complaint.”

For Mr Moodie, *Ilay Campbell, et alii.*Alt. *Rolland, et alii.*Clerk, *Tait.*

C.

Fol. Dic. v. 3. p. 425. Fac. Col. No 31. p. 56.

1781. February 10.

GEORGE HALDANE *against* THOMAS TRAILL.

No 181.

The claim of an apparent heir was set aside, though he produced titles, and his grandfather and father had been enrolled on the same lands, because there

AT a meeting of the freeholders in the county of Orkney, in 1780, Mr Trill demanded an enrolment, in the character of apparent heir.

In support of this claim, he produced two retours of the ancestor, and the instruments of sasine following hereon, both dated in 1723, and duly recorded.

To this claim Mr Haldane

Objected: To connect an instrument of sasine with the retour upon which it proceeds, it is necessary to produce the precept issued from the Chancery, by which the Sheriff is warranted to infeft the person served, in the lands contain-

ed in the retour. Without this, the feudal title is incomplete, and could not be the foundation of a freehold claim in the person of the ancestor. Of necessary consequence, Mr Traill's neglecting to exhibit the precepts must, in terms of the statute 16th Geo. II. prove fatal to his enrolment.

Answered; Mr Traill and his predecessors have been in possession of these lands for more than 40 years, upon heritable titles. They are, therefore, by the statute 1594, c. 218. freed from the necessity of producing the precepts of sasine upon which their infestments have proceeded.

"THE LORDS repelled the objection."

N. B.—This gentleman's claim was rejected by the Court upon another ground, which was, his not having properly ascertained the valuation of his lands.

Objector, *Ilay Campbell, et alii.* Alt. *Rolland, et alii.* Clerk, *Tait.*

C. *Fol. Dic. v. 3. p. 425. Fac. Col. No 30. p. 55.*

1783. *January 25.* JOHN M'KENZIE *against* DONALD MUNRO.

IN this case, Mr Munro, in the character of apparent heir to his brother, having been enrolled at the Michaelmas meeting 1782, as a freeholder in the county of Ross, although no claim had been lodged for him till two days before the meeting, the LORDS, upon a complaint in the name of Mr M'Kenzie, founded on the statute 16th Geo. II. cap. 11. § 7.

Found, "That the freeholders did wrong in admitting Mr Munro to the roll of freeholders, and granted warrant for his name being expunged."

Act. *Elphinston.* Alt. *Abercromby.* Clerk, *Campbell.*

C. *Fol. Dic. v. 3. p. 426. Fac. Col. No 82. p. 130.*

1793. *January 19.* WILLIAM M'DOWALL and GEORGE HOUSTON *against* JAMES HAMILTON.

JAMES HAMILTON was enrolled as a freeholder in the county of Renfrew, in the character of heir apparent to his father, upon production of the following titles; *1mo*, A disposition of lands in favour of his father, affording a qualification; *2do*, An instrument of sasine, proceeding on the precept in the disposition; *3tio*, A charter of confirmation of the disposition and infestment, obtained by the claimant after his father's death. In a petition and complaint, Messrs M'Dowall and Houston

Pleaded, An heir apparent is only entitled to be enrolled where his predecessor could have claimed that privilege.

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appeared a defect in the proof of his having the legal valuation.

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The claim of an apparent heir to be enrolled, must, in the same manner as any other, be lodged two months before the Michaelmas meeting.

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An heir apparent may be enrolled, although his predecessor had only a base infestment, which has been made public by confirmation since his death.