

Colden; when Mr Ramsay, standing first on the roll, was, by his own casting vote, elected preses; and, alleging that Mr Rankine's name had, at a former meeting, been improperly placed in the roll before Colonel Irvine, Mr Ramsay proposed that the roll should be altered, and Colonel Irvine placed before Mr Rankine; and, Mr Rankine declining to vote, Mr Ramsay, as preses, ordered the clerk to make up a new roll, in which Colonel Irvine's name was placed before Mr Rankine; and this roll was signed by Mr Ramsay, as preses, and by the clerk, and engrossed in the minutes. Mr Rankine applied to the Court, by summary complaint, praying to be restored to his former place upon the roll.

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In the answers given in for Mr Ramsay, it was *objected*, That the statute 16th of the late King did not authorise a summary complaint to the Court in such a case as the present; and, therefore, the summary complaint was incompetent.

Mr Rankine, to obviate that objection, brought an action of declarator, in which he called Mr Ramsay and Colonel Irvine, and concluded to have it found and declared, that he was entitled to hold the same place in the roll he formerly had; which action was taken up along with the complaint.

“ THE LORDS ordered Mr Rankine to be restored to his former place on the roll.”

For Mr Rankine, *Al. Wight.*For Mr Ramsay, *Dav. Græme.**A. E.**Fol. Dic. v. 3. p. 430. Fac. Col. No 57. p. 97.*1768. *January 2.*WILLIAM DOUGLAS of Bridgetown *against* Captain ALEXANDER REID of Logie.

AT the Michaelmas head-court for the county of Forfar, in October 1767, a claim was presented for Captain Reid, for being enrolled in the roll of freeholders for said county; and the claim narrated the different titles founded on by the claimant, and, among others, the general retour of Thomas Stormont of Kinclune.

When the claim and claimant's title-deeds came to be considered by the freeholders, the above-mentioned retour was amissing; upon which it was *objected*, That the claimant could not be enrolled, in regard that Thomas Stormont's retour not being produced, which was a necessary part of the claimant's progress, there was no proper evidence before the freeholders to show that the claimant had right to the lands of Kinclune, part of the lands upon which he claimed.

*Answered* for Captain Reid; That not being able to be present at the meeting of the freeholders, he had lodged the whole title-deeds, and, among others, the retour now mentioned, in the hands of the Sheriff-clerk of the county, who was the notary that took his infeftment on the lands of Kinclune, with orders

No 226.

A claimant had lodged his title deeds with the Sheriff-clerk, including a retour, by which they were connected. The Sheriff-clerk had mislaid this retour at the meeting of freeholders, but acknowledged he had had it that morning. The objection of the want of

No 226.  
this deed was  
sustained in  
the Court of  
Session, but  
their judg-  
ment was  
reversed in  
the House of  
Lords.

to lay his claim and titles before the meeting of freeholders. And the Sheriff-clerk, who had been elected clerk to the freeholders' meeting, acknowledged, in presence of the freeholders, that the retour was lodged with him, and that he had it in his hand the morning of that meeting, and imagined he had brought it into court with him, although he could not then find it.

The majority of the freeholders were of opinion, that the objection ought to be repelled; and Captain Reid was accordingly added to the roll.

Mr Douglas complained of this judgment of the freeholders to the Court of Session, and *pleaded*, That, by the statute of the 16th of George II. it was expressly required that every claimant should produce the titles and vouchers of his qualification to the freeholders; and as, in the present case, Captain Reid had not produced the retour he founded on, which was a most material part of his title-deeds, as, without it, he could not connect his sasine with the precept on which it proceeded, the charter and precept of sasine, on which the claimant was infeft, not being conceived in favours of the claimant's author Thomas Stormont, but in favour of his father Alexander Stormont, so that Thomas Stormont could not have taken infeftment, in virtue of the precept contained in that charter, without making up his titles by a service; and as he could not have taken infeftment, so neither could he convey or assign that precept to another, for the purpose of his being infeft. The retour therefore was a necessary mid-couple for connecting the claimant's sasine with the precept on which it proceeded, as without it the sasine would have proceeded without a warrant, and the retour not being produced, Captain Reid the claimant could not be considered as having any title to these lands.

*Answered* for Captain Reid: That he lodged his whole title-deeds with the Sheriff-clerk of the county, to be produced to the freeholders, not being able to be present himself, all of which were accordingly produced to the freeholders, this retour excepted, which the Sheriff-clerk acknowledged he had in his custody the morning of the meeting; that this retour not being produced, could not be fatal to his claim, as it was no more than a link in the title, to give right to the precept of sasine contained in the charter; that, in the present case, the disposition from Thomas Stormont, in favours of the claimant, proceeds upon a recital of the retour in question, and mentions, that it was delivered to the claimant; and which disposition, with the charter and sasine, in which last the retour is likewise recited, being all produced to the freeholders, clearly instructed the claimant's right to the lands; and, as it was impossible the want of the retour could vary or alter the terms of the right, so its not being instantly to be found in the court of freeholders, could be no solid objection to the claimant's enrolment, more especially, as an extract of the retour from Chancery is now produced in process.

“ THE LORDS sustained the objection, That Thomas Stormont's retour, one of the title-deeds mentioned in the claim, and a necessary part of the respondent's progress, was not produced to the meeting of freeholders; and find that

the freeholders did wrong, in admitting Captain Alexander Reid upon the roll of freeholders, and ordained the Sheriff-clerk to expunge his name from said roll."

N. B. This judgment was reversed upon an appeal.

For Douglas, *John Swinton, junior, & Andrew Crosbie, &c.*

For Captain Reid, *Alex. Lockhart, & A. Elphinstone, &c.*

A. E.

*Fac. Col. No p. 126.*

1773. June 24.

Colonel CHARLES CAMPBELL of Barbreck *against* JAMES M'NEIL of Kilmory, and JAMES M'CONOCHIE of Ambriesbeg, two of the Freeholders of the Shire of Bute.

COLONEL CAMPBELL of Barbreck lodged a claim for being enrolled as a freeholder in the county of Bute at Michaelmas 1772. It happened that no more than two of the freeholders attended at the hour of meeting, viz. Messrs M'Neil and M'Conochie, who proceeded to business; and, although Colonel Campbell's claim was moved to them by the clerk to the meeting, they shifted off its cognizance, and proceeded to make up their minutes, as if no such claim had existed. But, while the preses was signing these minutes, the claimant's brother-in-law, who was himself a freeholder, came to the meeting, and insisted, that they should take the claim under their consideration. This, however, they refused, upon the ground, that their business was concluded, and the meeting dissolved.

Colonel Campbell presented a complaint, charging, that the pretences on which his claim was not taken notice of, at the Michaelmas meeting, were entirely frivolous; and that no solid objection was so much as pretended to lie against his titles, which were also then produced. And the minutes of the meeting having been produced, as to this particular, they run thus: 'Then the clerk informed the meeting, that a claim had been lodged with him, in his capacity of sheriff-clerk, in name of Colonel Charles Campbell of Barbreck, for his being admitted upon the roll of freeholders; and intimation having been made at the door of the court-house for Colonel Campbell, or any person authorised by him, to appear and insist in his said claim, no appearance was made; and none other compearing to desire to be put upon the roll, as apparent heirs or otherwise, the meeting found, and hereby find, that the roll stands as before.'

THE LORDS found, that the respondents did wrong in refusing to enrol the complainer, and ordered his name to be added to the roll; and found the respondents liable in costs.

*Act. Ilay Campbell:*

*Alt. Walter Campbell.*

*Clerk, Tait.*

*Fol. Dic. v. 3. p. 430. Fac. Col. No 75. p. 183.*

No 226.

No 227.

The only two freeholders who attended a Michaelmas meeting evaded taking cognizance of a claim for enrolment, which was duly lodged, and moved to them by the clerk, on the pretence, that neither the claimant, nor any person for him, appeared to support his claim.

A motion made to them by another freeholder, while they were still in the court-room, to take the claim under consideration, was held by them to be too late. Found to have done wrong, and the claimant ordered to be added to the roll.