

1773. *March 3.*

Mr COSMO GORDON, Advocate, *against* ALEXANDER ABERNETHY of Mayen.

THE claim lodged for Mr Abernethy, in order to be enrolled at Michaelmas 1772, bore to be 'As heir apparent to the deceased James Abernethie his father who stood on the said roll of freeholders for the county of Banff, at the time of his death, in virtue of his charter and infeftment on the lands of Mayen, and others, therein specified, lying within the parish of Rothemay, and county of Banff; which charter and infeftment are herewith produced.'

Mr Abernethy having been enrolled at the Michaelmas meeting, notwithstanding an objection made thereto by Gordon, one of the freeholders present, because the copy of his claim lodged with the Sheriff-clerk did not specify, either the dates of his predecessor's titles, the particular lands on which he desired to be enrolled, or their extent or valuation, which were essential requisites, in claims, whether of an apparent heir, or singular successor: Mr Gordon presented a complaint against this enrolment, under the authority of a clause of the 16th of his late Majesty, which enacts, that, to prevent all surprise at the Michaelmas meetings, every freeholder who intends to claim to be enrolled, at any subsequent Michaelmas meeting of the freeholders, shall, for the space of two kalendar months, at least, before the said Michaelmas meeting, leave with the Sheriff, or Stewart's clerk, a copy of his claim, setting forth the names of his lands, and his titles thereto, and dates thereof, with the extent or valuation on which he desires to be enrolled; and, in case of his neglect to leave his claim as aforesaid, he shall not be enrolled at such Michaelmas meeting, &c.

In answer, Mr Abernethy endeavoured to distinguish the case of an apparent heir from that of a singular successor, to whom alone, he argued, the reason of the statute applied. But the words of the statute were thought to be so generally conceived, as to leave no room for such distinction.

"THE LORDS find, that the freeholders did wrong in admitting Alexander Abernethy on the roll of freeholders; and, therefore, grant warrant to expunge his name from the said roll."

Act. Sol. General, Alex. Gordon, jun. Alt. Elphinstone, J. Boswell. Clerk, Pringle.
Fol. Dic. v. 3. p. 429. Fac. Col. No 65. p. 156.

* * * The Court had formerly repelled the objection of the want of the dates of the titles in two cases, Ogilvie of Clova against Coutts, and Skene of Skene against Graham, both in 1768. See APPENDIX.

No 208.

Objection sustained to the enrolment of an apparent heir, on a claim lodged with the Sheriff-clerk, that the claim was defective, in so far as it neither mentioned the dates of the predecessor's titles, nor the particular lands on which the claimant desired to be enrolled, nor their extent or valuation.