No 131.

But, whatever may be the case as to the liferenter, it is, with submission, thought, that the respondent, in virtue of his right of fee of these lands holding of the Crown, and of a sufficient valuation, has a clear title to be on the roll; and that it was a matter of moonshine in what manner the liferent was constituted, or who is liferenter; for the liferenter's possession must, in every view, be considered as the possession of the fiar; and it is equally immaterial, whether the fee be an irredeemable right of property, or a right of wadset, both being equally good, by the act 1681, to constitute a freehold qualification.

'THE LORDS find, That the respondent, James Hamilton, is not entitled to be enrolled in the roll of freeholders for the county of Dumbarton; therefore grant warrant to expunge him.'

Act. *Dean of Faculty.* Alt. *Macqueen, Ilay Campbell.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 416. *Fac. Col. No* 79. *p.* 194.

1774. *February* 23.

Mr JAMES COLQUHOUN *against* CAPTAIN DUNCAN URQUHART.

No 132.
Previous registration, for year and day, of a renunciation by a liferenter, is not requisite to entitle the fiar to vote.

SIR LUDOVICK GRANT executed a proper wadset of certain lands affording a freehold qualification, in favour of Sir James Colquhoun, in liferent, and of his son Mr James Colquhoun, in fee.

A few months before Michaelmas, Sir James granted to his son a renunciation of his liferent right; upon which the latter, at the Michaelmas meeting claiming to be enrolled, it was *objected* to him, That his claim was premature, as it ought to have been a year and a day posterior to the registration of the renunciation; besides, that a proper wadset could not admit a double qualification of fee and liferent. The freeholders having sustained the objections, Mr Colquhoun complained to the Court, and

Pleaded; The first part of the objection is founded upon not distinguihsing between the right of enrolment and that of voting, and in supposing Sir James's renunciation to be an essential ingredient in the complainer's qualification; whereas he had a good title to be enrolled, independent of the renunciation. It was the charter and infeftment which constituted his freehold qualification; and whether the fee were affected with a liferent or not, the fiar's claim to be enrolled was the same in both cases, whatever effect that circumstance might have on the right of voting, which no doubt belongs to the liferenter, if he chooses to take it; but otherwise it as undoubtedly falls to the fiar. The renunciation, therefore, being no ingredient in the complainer's qualification, did not require a year's previous registration.

As to the second part of the objection, it is sufficient to observe, that the statute 1681, which allows of proper wadsets being legal freehold qualifications,

so long as they stand unredeemed, authorises no such distinction with respect to liferents, as if they could not subsist on a redeemable right. No 132.

Answered; In this case the claim is not entered in the character of naked fiar, to which the renunciation would indeed not be essential, but in that of sole proprietor, to constitute which the renunciation was necessary; and, therefore, being an indispensable ingredient in the complainer's title, it ought, as well as his charter and sasine, to have been completed a full year before the enrolment. With regard to the other particular mentioned, it would seem that the granting of a wadset to one person in liferent, and to another in fee, was inconsistent with the nature of that right; for a right bearing *ex facie* to be redeemable *quandocunque*, admits not of a liferent being created over it.

THE LORDS (the question being put to enroll simply, or *qualificate*) 'ordered 'the complainer to be enrolled simply.'

Act. *Lockhart, J. Grant.* Alt. *Macqueen.* Clerk, *Pringle.*

Fol. Dic. v. 3. *p.* 416. *Fac. Col. No* 109. *p.* 291.

1776. *March.* ——— *against* DALRYMPLE.

No 133.

DALRYMPLE of Fordel claimed to be enrolled on certain lands, conveyed to him by Wemyss of Wemyss, redeemable at Whitsunday 1770, or any subsequent Whitsunday, on payment or consignation of L. 20 Sterling. The word *wadset* did not occur in the conveyance; and it was *objected* to the title, That it was not a wadset, but one of those redeemable rights, reprobated by the act of Queen Anne. *Answered*, It is not necessary to the constitution of a wadset, that there be a borrower and lender, or any loan or debt; it may be a security for a gratuitous gift; nor is it necessary that there should be any clause of requisition, as many of the old wadsets are without it. THE LORDS repelled the objection; and their decision was affirmed upon appeal.——*See* APPENDIX.

Fol. Dic. v. 3. *p.* 416.

1789. *March* 6.

Sir WILLIAM FORBES, Baronet, and Others, *against* WILLIAM BLAIR.

No 134.

PRIOR to 1787, the Duke of Gordon had granted to Æneas Macintosh the liferent of the superiority of certain lands.

In 1787, the Duke conveyed to William Blair the fee of the superiority of the same lands, redeemable on payment of L. 50 Sterling, 'at the first term 'of Whitsunday, after the lapse of two years from the death of the liferenter.'