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a new valuation, nor had inserted a declaratory conclusion in the action of reduction of the old valuation, he could not bring before the freeholders any legal evidence, that the respondent's lands were valued at a lower rate than L. 400.

THE LORDS were clear as to the merits of this case, that it was a complete alteration of circumstances; and the only doubt they entertained was of the competency; they were, however, in general of opinion, that the statute should be supported, though extended to a *casus improvisus*, which it was admitted the present was. They therefore "repelled the objection to the competency of the petition; find that the freeholders did wrong in continuing Mr Alexander Bruce upon the roll; and grant warrant to and ordain the sheriff-clerk of Linlithgow to expunge his name from the said roll."

For Hope Weir, *Lockhart, Baillie.*For Bruce, *Crosbie.*

R. H.

Fac. Col. No 75. p. 217.

1774. February 23.

CAPTAIN THOMAS DUNBAR of Grangehill, *against* CAPTAIN DUNCAN URQUHART of Burdsyards, and Others.

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On a freeholder's disposing his lands with procuratory and precept, it is sufficient to preserve his right, that in the procuratory, and likewise in a separate obligation, the dispositive is taken bound not to execute the procuratory.

CAPTAIN DUNBAR's claim for enrolment, as a freeholder of the county of Elgin, was, by the meeting of freeholders assembled at Michaelmas 1773, rejected on the following grounds; *1st*, That, at Michaelmas preceding, while he stood on the roll, it having been objected to him, that he was denuded of his qualification, and he, when ordered to confess or deny the facts on which this objection was founded, having remained silent, was expunged from the roll; and, therefore, that it was not competent for him now to claim to be enrolled on the same titles; and, *2dly*, That, independently of that *res judicata*, the objection was still insurmountable, Captain Dunbar having actually granted a disposition of the lands on which he was enrolled, with procuratory and precept, in favour of another person.

In a complaint preferred to the Court, Captain Dunbar insisted, that neither of the grounds stated by the freeholders was sufficient to support their proceeding; and,

As to the *first, pleaded*; The doctrine of *res judicata*, arising from the establishment of regular courts, is not applicable to the determinations of freeholders at their Michaelmas meetings, who, except in one instance, are at liberty either to adopt or reject the resolutions of prior meetings. The single exception is that introduced by act 16th Geo. II. which declares, that a freeholder enrolled, and standing on the roll, not complained of, for four kalendar months, shall continue there till an alteration of his circumstances happen. But the enactment does not extend to the case of a claimant who has been kept

off the roll. Freeholders of Lanark *contra* Menzies, in 1768; M^cQueen and Dundas *contra* Freeholders of Linlithgow, in 1768. See APPENDIX.

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With respect to the *second* objection, *pleaded*; It is true the complainer has granted a disposition of the lands composing his qualification, with procuratory and precept; but then the procuratory is expressly so limited, that it cannot 'take effect until his death;' the plain consequence of which is, that he retains the right of superiority during his life. Besides, the disponent has executed a separate obligation, by which he has bound himself to hold the lands of the complainer during his life, and neither to execute the procuratory, nor confirm a base infeftment, nor adjudge in implement of the disposition. Murray *contra* Neilson, 5th March 1755. No 149. p. 8804.

Answered, with regard to the *first* point; A judgment of freeholders, when acquiesced in for four months, is not liable to review, any more than if it had been confirmed by a decision of this Court, or of the House of Peers.

With respect to the *second* objection; The lands are herèby absolutely conveyed, no limitation of the disponent's right appearing either in the dispositive clause, or in the obligation to infeft, which is both *a me* and *de me*; for, notwithstanding the reservation in the procuratory, the disponent might, by confirmation at any time, become the vassal of the Crown. The complainer's right has thus become precarious; and none such, a proper wadset alone excepted, can constitute a freehold qualification. Nor can the obligation referred to have any other effect than to shew the complainer's sense of the lameness of his right. It has, however, been put on record; but if that circumstance could have mended the matter, it should have been year and day prior to the meeting; whereas it was not even executed three months before it. 17th January 1755, Dundas *contra* Craig, No 166. p. 8788.

Replied; Registration year and day previous to enrolment is indeed necessary as to every writing or deed on which the claimant, either in whole or part, founds his title. But here the obligation is none of the grounds of the complainer's title, being calculated merely to obviate any objection that might eventually be made to these grounds.

THE LORDS "ordered Captain Dunbar to be added to the roll."

Act. Lockbart.

Alt. M^cQueen, Ilay Campbell.

Fac. Col. No. 108. p. 289.

1781. *January 23.* ILAY CAMPBELL *against* MALCOLM FLEMING.

IN the year 1773, Mr Fleming was admitted to the roll of freeholders in the county of Dumbarton, as liferenter of sundry lands, part of the estate of Cumbernauld. In October 1779, Lady Elphinstone, proprietrix of that estate, for

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No alteration
of circum-
stances when
the renewal