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.'

No 134.
found insufficient to confer the privileges of a freeholder.

And, in virtue of this conveyance, the lands being of the requisite valuation, Mr Blair was enrolled as a freeholder in the county of Aberdeen.

In a complaint preferred to the Court of Session in the name of Sir William Forbes, and several other freeholders in that county, it was

Pleaded, In a wadset, lands are conveyed to a creditor in security of money lent, and are to be retained by him till the debt be paid. And the difference between what is called a proper and an improper wadset is, that, in the former, the creditor, during the non-redemption, has the profits of the land for the use of his money; while, in the latter, as he is not obliged to content himself with the yearly produce of the lands, if not equal to the legal interest of the sums lent, so he may be called upon to account, and to renounce his right, if it shall appear that he has received enough for paying what is due to him. In both cases, possession is an essential quality of the right; and, therefore, the wadset of a right of superiority, burdened with a liferent, where the lands are, of necessary consequence, occupied by the liferenter, must be quite irregular and inept; Stair, b. 2. tit. 10. § 9.; Erskine, b. 2. tit. 8. § 26.

Even although the constitution of such a wadset could be reconciled to feudal principles, it seems altogether inadequate to the establishment of a freehold qualification. When the statute of 1681 gave a preference, in this respect, to proper wadsetters, over those having the right of reversion, it was because the former appeared to have the more substantial interest in the lands, and were in possession. But that reason is not applicable to a case such as this, in which the wadset may be followed with possession, for two years only, and that after the death of the liferenter, an event which may not occur during the lifetime of the present holder of the wadset right. To rights of this sort it is impossible to imagine that the Legislature ever meant to annex that valuable privilege; and so it seems to have been determined, 1st July 1773, Sir James Colquhoun against James Hamilton, No. 131. p. 8743.

Answered, A wadset is a right in lands subject to redemption, and may be distributed into as many parts as the most unlimited property. As it is possible to acquire an irredeemable right of fee, while the disponer either reserves the liferent to himself, or conveys it to a third party, so one may purchase a redeemable right under the same limitations. In all those cases, it is only after the death of the liferenter that the fiar can enter into the full enjoyment of his right. But this circumstance cannot be thought anywise inconsistent with feudal ideas. And it seems to be equally unimportant, whether the right of liferent is or is not subject to the same privilege of redemption with the right of fee; Stair, b. 2. tit. 10. § 2. 10.

The other objection deduced from the statutes, relative to elections, appears to be equally ill founded. It is, indeed, to proper wadsetters, in exclusion of those holding other redeemable rights or conveyances in security, that the act of 1681 has appropriated the right of voting as a freeholder. And the true criterion of a proper wadset is, that the creditor has the use or produce of the

lands, *unaccountably*, for the use of his money. But it is no where required, that this use shall commence at the same time that the money is advanced. And where a sum is to be lent in this way, on an estate subject to a liferent, or other temporary incumbrance, the lender, it is to be presumed, will frame his bargain in such a manner, that the produce of the lands, for the period during which he is entitled to possess, shall, on the whole, afford to him a sufficient compensation for his being deprived, during a certain time, of that part of his yearly income. In the case of Sir James Colquhoun against Hamilton, the qualification does not seem to have been founded on a proper wadset, like the present, but on a disposition in security; and, at any rate, the more recent determination of 23d February 1774, Mr James Colquhoun against the Freeholders of Banffshire, No. 132. p. 8750. was agreeable to the argument maintained for the respondent. No 134.

A majority of the Court were of opinion, that such a wadset as the one in question did not give a freehold qualification.

THE LORDS found, "That the freeholders did wrong in admitting Mr Blair to the roll, and ordered his name to be expunged," *&c.*

Mr Blair preferred a reclaiming petition, upon which, however, in consequence of certain subsequent proceedings, it became unnecessary to give any determination.

Act. *Dean of Faculty, Wight, Hay, et alii.* Alt. *G. Fergusson, Tait, et alii.*
Clerk, *Gordon.*

C. *Fol. Dic. v.* 3. *p.* 416. *Fac. Col. No* 66. *p.* 119.

SECT. III.

Nominal and Fictitious.

1745. *July* 30.

The FREEHOLDERS of KINCARDINESHIRE *against* BURNET of Crigie.

No 135.

BURNET, Elder of Crigie, disponed part of his estate to his eldest son, and he gave a charter thereof to his father, to be held of him blench.

Objected to the title of the son to stand on the roll of electors for the said shire, That he had no real interest, but that his title was fictitious, nominal and created on purpose to make a vote; and, therefore, ought not to be sus-