

ed in the retour. Without this, the feudal title is incomplete, and could not be the foundation of a freehold claim in the person of the ancestor. Of necessary consequence, Mr Traill's neglecting to exhibit the precepts must, in terms of the statute 16th Geo. II. prove fatal to his enrolment.

Answered; Mr Traill and his predecessors have been in possession of these lands for more than 40 years, upon heritable titles. They are, therefore, by the statute 1594, c. 218. freed from the necessity of producing the precepts of sasine upon which their infestments have proceeded.

"THE LORDS repelled the objection."

N. B.—This gentleman's claim was rejected by the Court upon another ground, which was, his not having properly ascertained the valuation of his lands.

Objector, *Ilay Campbell, et alii.* Alt. *Rolland, et alii.* Clerk, *Tait.*

C. *Fol. Dic. v. 3. p. 425. Fac. Col. No 30. p. 55.*

1783. *January 25.* JOHN M'KENZIE *against* DONALD MUNRO.

IN this case, Mr Munro, in the character of apparent heir to his brother, having been enrolled at the Michaelmas meeting 1782, as a freeholder in the county of Ross, although no claim had been lodged for him till two days before the meeting, the LORDS, upon a complaint in the name of Mr M'Kenzie, founded on the statute 16th Geo. II. cap. 11. § 7.

Found, "That the freeholders did wrong in admitting Mr Munro to the roll of freeholders, and granted warrant for his name being expunged."

Act. *Elphinston.* Alt. *Abercromby.* Clerk, *Campbell.*

C. *Fol. Dic. v. 3. p. 426. Fac. Col. No 82. p. 130.*

1793. *January 19.* WILLIAM M'DOWALL and GEORGE HOUSTON *against* JAMES HAMILTON.

JAMES HAMILTON was enrolled as a freeholder in the county of Renfrew, in the character of heir apparent to his father, upon production of the following titles; *1mo*, A disposition of lands in favour of his father, affording a qualification; *2do*, An instrument of sasine, proceeding on the precept in the disposition; *3tio*, A charter of confirmation of the disposition and infestment, obtained by the claimant after his father's death. In a petition and complaint, Messrs M'Dowall and Houston

Pleaded, An heir apparent is only entitled to be enrolled where his predecessor could have claimed that privilege.

No 181.
appeared a defect in the proof of his having the legal valuation.

No 182.
The claim of an apparent heir to be enrolled, must, in the same manner as any other, be lodged two months before the Michaelmas meeting.

No 183.
An heir apparent may be enrolled, although his predecessor had only a base infestment, which has been made public by confirmation since his death.

No 183.

But the claimant's father having only a base infestment, was not qualified, and the charter of confirmation, obtained after his death, cannot be considered as part of his titles; 3d July 1753, Abercromby against Gordon, No 177. p. 8801.

Answered, A charter of confirmation makes the base infestment public from its date; Erskine, b. 2. tit. 7. § 15.; Stair, b. 2. tit. 3. § 28. The intermediate death of the party infest does not hinder its operation; and to entitle an heir apparent to be enrolled, it is sufficient for him to produce titles in the person of his predecessor, which would have given him that privilege.

The Court, upon the grounds stated for the defender, dismissed the complaint.

Act. *George Fergusson.*Alt. *Cha. Hay.*Clerk, *Gordon.*

D. D.

*Fol. Dic. v. 3. p. 425. Fac. Col. No 14. p. 30.*1790. *December 14.*SPIERS *against* CAMPBELL.

No 184.

AN apparent heir of a person whose estate had been vested in trustees, was found entitled to vote.—*See APPENDIX.*

*Fol. Dic. v. 3. p. 426.*1803. *February 12.*STEWART *against* BLAIR.

No 185.

A vote given on a title of apparency is good, altho' there was a possibility of a nearer heir being in existence at the time.

THE Honourable Montgomerie Granville John Stewart objected to the claim of enrolment of David Blair, Younger of Borgue, Esq; in the roll of freeholders of the stewartry of Kirkcudbright. He claimed to be enrolled as apparent heir of the late Lieutenant-Colonel John Blair, his elder brother, proprietor of the lands of High Borgue, and others. He produced a charter under the Great Seal, in favour of David Blair, Esq; his heirs and assignees whomsoever, and a disposition of the lands granted by the said David to John Blair, his eldest son, and the heirs-male of his body, containing an assignation to the charter and precept, with an instrument of sasine following thereon, in Colonel Blair's favour; in consequence of which titles, he had for many years voted as a freeholder in the stewartry. He died on the 13th July 1802, leaving a wife, but no children; and his brother claimed upon his apparency on the 23d July thereafter, at a meeting for the election of a Member of Parliament. His claim having been sustained by the freeholders, Stewart presented a petition and complaint against the enrolment; and

Pleaded, imo, The destination to John Blair, and the heirs-male of his body, limited his right to that particular species of heirs, upon the failure of which, the