

1796. February 24. M'KAY of Scotstown *against* HOUSTON of Creech.

No 215.

MR M'KAY of Scotstown claimed at Michaelmas 1795 to be enrolled a freeholder in Sutherlandshire, and produced, as his titles, a charter and sasine of certain lands, which are there said to be contained in two contracts of wadset; but the claim did not specify whether Mr M'Kay claimed as wadsetter or proprietor, nor were the contracts of wadset produced to the meeting. This, among many other objections, having been stated, the freeholders refused to enrol Mr M'Kay, who thereupon complained to the Court of Session; and after advising the complaint, with answers, replies, and duplies, the Court ordered Mr M'Kay to be added to the roll. A reclaiming petition was refused, without answers, 9th March.

*Supplement to Wight, p. 22.*

1796. February 26.

JAMES LINDSAY CARNEGIE, Esq; of Spynie and Boysack *against* CHARLES GARDYNE, Esq.

No 216.

THE objection, 'That the claim did not at all specify the register in which the claimant's sasine was recorded,' having been repelled by the freeholders, the Court of Session, upon advising a complaint by one of them, with answers, replies, and duplies, affirmed their judgment, and awarded expenses against the party who complained of it. And this, although it was pleaded by the complainer, that since both the statutes last mentioned, and the previous one of 12th Queen Anne, cap. 6. § 1. require the sasine to be registered for a certain time before enrolment, registration of the sasine is thereby chiefly made an essential ingredient in the qualification; and that therefore the expression 'dates' in the act of the late King must apply equally to the registration, as to the taking of the sasine.

*Supplement to Wight, p. 16.*

1796. February 26. LINDSAY CARNEGIE *against* LINDSAY.

No 217.

A CASE occurred, in which it was objected, That the claim had not specified the year of registration. The claim run thus, 'Which charter bears date the 5th day of July 1794, and is written to the seal, and registered, and sealed the 9th day of September 1794; *2do*, Instrument of sasine thereon, dated the 23d of September, and recorded in the particular register of sasines kept at Dundee, for the shire of Forfar, the 24th of said month.' But it being answered, That the 'said month' clearly referred to the year last specified, es-

No 217.

pecially as no other month of September had occurred betwixt the date of the charter and the sasine founded on, and the lodging of the claim, the Court repelled the objection.

*Supplement to Wight, p. 17.*

1802. July 6.

DAVIDSON *against* ELPHINSTONE.

No 218.

A mandate is necessary to authorise a claim for a person residing abroad to be enrolled at a meeting of freeholders. See No 211. P. 8837.

A CLAIM of enrolment was made in the name of the Honourable Charles Elphinstone, at a meeting of the freeholders of Stirling, on the 13th January 1802. This claim was brought forward by Robert Hill, writer to the signet, in the capacity of agent to the petitioner, who produced the following titles; 1. Charter of resignation under the Great Seal, in favour of the said Mr Hill, dated the 5th, and written to the Seal, and registered the 14th of July 1800; 2. A disposition from Hill to the petitioner, dated 5th September 1800, containing an assignment to the charter of resignation, and to the unexecuted precept of sasine; 3. Instrument of sasine, following on the charter and disposition, in favour of the claimant, dated the 8th, and recorded on the 24th, December 1800.

Harry Davidson, one of the freeholders, *objected, first*, That the titles did not afford legal evidence of old extent, in terms of the act of Parliament; and, *secondly*, That, as the claimant was out of the kingdom, and as no special mandate from him was produced, the claim made in his name by Hill could not be received. The freeholders repelled these objections; and Davidson complained, by a petition to the Court; in which, reserving the intrinsic objection to the titles, with regard to the preliminary objection of there being no special mandate, he

*Pleaded*; Every individual who is out of the kingdom of Scotland, and who means judicially to claim any right, can do it only by the intervention of some person possessing a mandate or power for that purpose. The possession of title-deeds does not afford a presumption of this mandate, sufficient to entitle the holder to insist in a suit in the name of a person abroad; Bankton, B. 4. Tit. 3. § 25. Stewart, No 17. p. 353.; and there is no provision in the statutes relative to the election of Members of Parliament, exempting claims for enrolment as a freeholder from this general rule of law, and conferring upon a court of freeholders the power of dispensing with this requisite. There is no evidence that Mr Elphinstone wished to acquire this estate, and still less that he inclined to be enrolled upon it as a freeholder; for possibly he may be conscious of labouring under some one or other of the personal disqualifications. The act 16th Geo. II. c. 11. § 7. expressly requires a claim to be made previous to every Michaelmas meeting; and a claim is equally necessary at a meeting for election. It further provides, That every party who may conceive himself