

the wife, in her predecessor's person, if she be an heiress, or, in her own, if she be only a singular successor; and the right reserved, is the right of voting at elections, not that the infertment does not require registration for a year. No. 12.

The case of Farquhar Gray was solely a case of apparençy; and the judgement of the Court, supporting the enrolment, went entirely upon the admitted apparençy of the wife, when it is not necessary for the husband to wait a year after her infertment before he can be enrolled; (No. 188. p. 8814; Wight, p. 251.) The case of Sandilands referred to the same point. The wife's infertment had been taken and recorded three years before the claim of enrolment, which therefore entitled her husband to be enrolled, whether she was an heiress or not. The case of Fraser against Lord Woodhouselee, (19th June 1804), was similar, No. 8. APPENDIX, *supra*.

The Court were a good deal divided in opinion in this case; but the complaint (27th February 1807) was dismissed. To which judgment, the Court (11th March) adhered, by refusing a reclaiming petition without answers.

For Complainer, *Mat. Ross, Jo. Clerk, J. Gordon, Geo. Ross.*  
 Alt. *Dean of Faculty Blair, Rolland, Hamilton, Fergusson.*  
 Clerk, *Pringle.*

Agent, *Jo. Tod, W. S.*  
 Agent, *Jas. Dundas, W. S.*

F.

*Fac. Coll. No. 277. p. 624.*

1807: June 27.

DUFF against GORDON.

AT Michaelmas 1806, John Gordon younger of Cluny, claimed to be enrolled among the freeholders of the county of Banff, upon a disposition by Charles Gordon, Esq. of Cluny, in favour of the claimant, and the heirs-male of his body; whom failing, to return to the said Charles Gordon, and his other heirs-male and assignees whatsoever.

Mr. Gordon was enrolled by the freeholders; against which Alexander Duff, Esq. of Mayne, complained, and

Pleaded: This vote is nominal and confidential; no price was paid for it; it is not conveyed to him absolutely; it is in a certain event to return to the granter and his heirs. These, together with the connection between the granter and the disponee, prove that this is a confidential vote, created solely with the view of increasing the political influence of the granter. Where a freehold has been created in favour of a stranger, with such a clause of return, the claim of enrolment has uniformly been rejected; Soutar, 26th November 1803, No. 6. APPENDIX, *supra*; Maxwell against Macdowall, 24th December 1803, No. 7. APPENDIX, *supra*. A son stands in a more confidential relation with a father, than any mere dependent can do.

Answered: It is just that the presumptive heir of a large estate should, when he attains majority, be enabled to discharge the political duties of a citizen;

No. 13.

In a charter by a father to his eldest son, the heir of the family, a clause of return to the granter, and his other heirs-male, does not render the vote nominal and fictitious.

No. 13. and nothing can be more natural than for a father to place him in this respectable point of view. A destination in favour of the heirs-male of the family is natural in the case of a presumptive heir, and it is consonant to the family arrangements. It betrays no undue confidence, nor can disqualify the disponent from the exercise of his legal franchise. When a stranger accepts of such a right, he thus prefers the family of the granter to his own; there is a strong presumption that the substantial interest remains with him; that the conveyance is a temporary expedient for his political purposes, and the disponent will hold himself bound to give effect to the clause of return, as soon as the purpose intended by the granter was served.

The Court considered this case as quite different from that of a vote with a clause of return to a stranger disponent, who cannot voluntarily defeat the substitution; but in the case of a son and heir, it is merely a simple destination, which might be altered at the pleasure of any of the substitutes; Marquis of Clydesdale against Earl of Dundonald, 26th January 1726, No. 3. p. 1265. It is just the same as if it had not been inserted. In the case of a younger son, it is different; Duke of Douglas against Lockhart, 18th February 1717, No. 31. p. 4343.

The complaint was dismissed with expenses.

For Complainer, *Cathcart, Gordon.* Agent, *W. Inglis, W. S.* Alt. *Hamilton, Fergusson.*  
Agent, *A. Grant, W. S.* Clerk, *Walker.*

F.

*Fac. Coll. No. 287. p. 657.*

\* \* A similar complaint at the instance of the Freeholders of Aberdeenshire against Mr. Gordon had been dismissed, 27th February 1807.