Burn in the said roll; and therefore grant warrant to, and ordain the sheriff-clerk of said county to add his name to the said roll.' No 230.

Act. *Rae, Al. Murray.* Alt. *Crosbie.*
Fol. Dic. v. 3. p. 431. Fac. Col. No 70. p. 132.

1790. *February* 23. WILLIAM NISBET *against* CHARLES HOPE.

No 231.
In questions respecting freehold claims, an extract of a charter from the records of Chancery not admitted.

WILLIAM NISBET claimed to be enrolled among the freeholders of the county of Linlithgow, in the right of his wife, whose estate, acquired by singular titles, and partly consisting of a right of superiority alone, was rated in the cess-books at L. 406: 6: 8.

In evidence of his wife's right to the lands, Mr Nisbet produced an extract from the records of Chancery of a charter in her favour, with an instrument of sasine, in which it was mentioned, that the wife's attorney had produced, as the warrant of her infeftment, 'quantum resignationis chartam sub sigillo per 'unionis tractatum custodiend. et in Scotia loco et vice magni sigilli ejusdem 'utend. ordinat. præceptum sasinæ subinsertum in se continen. de data,' &c.

Mr Hope, a freeholder in the county, objected to this claim, 1*mo*, That the extract from the records of Chancery was not sufficient; and, 2*do*, That a husband could not be enrolled in consequence of a right of superiority belonging to his wife. The freeholders refused to enrol. Mr Nisbet therefore complained to the Court of Session, and

Pleaded; An extract from any legal record, is equally respected with the principal writing itself, where its authenticity is not called in question; and therefore, the extract from the Chancery here produced, ought to have been sustained as full evidence of the charter, which was duly registered there. It may perhaps be said, that being only a copy of a charter, as it was prepared for passing the Great Seal, it does not appear from thence that the Great Seal was actually affixed to it. This objection, however, seems to be fully removed by the instrument of sasine, from which it appears, that the charter had been completed in the usual manner.

The other objection seems to be equally erroneous. It is declared by the statute of 1681, that husbands shall be entitled to vote for the freeholds of their wives; and thus, whatever would be the foundation of a right to vote if belonging to the husband himself, must be equally available to him when belonging to his wife. And although, by the subsequent enactment of 12th Anne, it was provided, 'That no husbands should vote at any ensuing election, by virtue of 'their wives' infeftments, who are not heiresses, or who have not right to the 'property of the lands on account whereof such vote shall be claimed;' this was thrown in merely to prevent the creation of occasional votes on the eve of an election, in the shape of liferents or redeemable rights, granted to wives for

No 231. the purpose of enabling their husbands to act as freeholders. Wight on Elections, p. 239.

Answered; As the seals in grants from the Crown, are what the subscription of an individual is in conveyances obtained from a subject, it was wisely provided by act 1672, c. 7. in order to prevent an improper or incautious use of them, that a record of all writings should be made up preparatory to their being authenticated in this manner. It may therefore be admitted, that an extract from this record is complete evidence of the charter or other writing having been prepared for passing the seals. This, however, is no evidence of the Great Seal having been affixed; and, until this be done, a Crown-charter is no more than an inchoated deed, which may be, and often is allowed to remain for ever in the same state. As to the instrument of sasine, it is merely the assertion of a notary, to which, unless it is supported by the relative writings, no regard can be paid.

2*dly*, A husband, since the enactment of 12th Anne, cannot be enrolled in virtue of his wife's infeftment, but in two cases; 1*st*, Where she is an heiress; and, 2*dly*, Where she has the property of the freehold. In this enactment, as well as in feudal language, property is distinguished from superiority. Thus it is understood in the statute of 1681, where it is declared, that only 'those shall 'have right to vote, who are publicly infeft in property or superiority.' And indeed, as those precautions, which have been used for preventing the undue multiplication of freehold qualifications, do not in general extend to the case of husband's claiming enrolment in right of their wives, such a limitation seems to be absolutely necessary.

Several of the Judges expressed an opinion, that both objections were well founded. But the former being the preliminary one, it appeared to be chiefly on this ground, that, after advising the petition and complaint for Mr Nisbet, which was followed with answers, replies, and duplies,

THE LORDS dismissed the complaint.

Act. *Wight.* Alt. *Williamson.* Clerk, *Colquhoun.*

C. *Fol. Dic. v.* 3. *p.* 431. *Fac. Col. No* 118 *p.* 227.

No 232. 1790. LORD ALVA *against* FREEHOLDERS of STIRLINGSHIRE.

IN the case of Lord Alva, which occurred at the election 1790, for Stirlingshire, the same point occurred as in the case of Nisbet, No 231. *supra*; but it became unnecessary to decide upon it. His Lordship's charter was not lost, but in the hands of a freeholder in the opposite interest, and who refused to deliver it up. His Lordship, however, produced an extract of it from Chancery, and a notorial copy of an entry in the books of the keeper of the Great Seal, bearing the fees of it to have been paid; also referred to the minutes of