

1796. February 26.

JAMES LINDSAY CARNEGIE *against* GEORGE ROBERTSON SCOTT.

**No 234.**

Where an objection is palpable, and can be verified *instantly* by documents produced, it is incumbent on the freeholders to reject the claim. Thus it is a competent objection in a court of freeholders, that the sasine of a claimant proceeds on an exhausted precept.

Miss Isabella Scott was infeft in 1773, upon a Crown charter, in lands in Forfarshire, which afford a freehold qualification.

It having been discovered, after the death of the notary who took the infeftment, that he had omitted to sign the 2d, 4th, 6th, and 8th pages of the sasine, (which consisted in all of 14,) she, in 1789, took infeftment a second time, on the same precept, and a second instrument of sasine was made out. Both sasines were duly recorded.

Mr George Robertson having married Miss Scott, he claimed to be put on the roll of freeholders, as her husband, and produced, as his title, the charter above mentioned and sasine 1789.

Mr Lindsay Carnegie *objected*, that a former sasine having been taken on the charter, that produced by the claimant was null, as proceeding upon an exhausted precept.

The Court of freeholders having repelled the objection, Mr Carnegie presented a petition and complaint, along with which he produced an extract of the sasine 1773.

In defence, Mr Robertson Scott

*Pleaded*; *imo*, The sasine 1789 is *ex facie* legal and regular; and it is an established rule of election law, that freeholders are not entitled to refuse enrolment upon any objection, which, like the present, requires extrinsic evidence to support it; Wight, p. 222; 26th February 1745, Dunbar, No 220. p. 8844; 5th February 1760, Campbell, &c. against Muir, No 8. p. 7783; 28th July 1761, Stewart, No 18. p. 8579; 9th January 1755, Forrester, No 137. p. 8755; 17th February 1779, Burn, No 230. p. 8852.

But, *2do*, The sasine 1789 is in fact unexceptionable; for, although two valid sasines in fee cannot be taken on the same precept, yet, where the first is inept, the second will be effectual. Now, the act 1696, c. 15. (which appears from the act of sederunt, 17th January 1756, to extend to sasines) directs every page to be signed by the notary; and such accordingly is the invariable practice. The sasine 1773 was therefore null, four of its pages not being signed by him.

*Answered*; *imo*, The objection stated to Mr Scott's enrolment did not require the aid of extrinsic evidence; for the sasine 1773, being part of the claimant's own titles, could not be so considered. Besides, any written evidence by which a nullity in the title is proved, is competent to be judged of by the freeholders; and new evidence may even be received in this Court. See Wight, p. 143.

*2do*, The sasine 1773 is in every respect legal and valid. The act 1696 regulated the subscription of securities only. The mode in which notaries must subscribe sasines, was previously settled by 1686, c. 17, which declares it lawful to write sasines by way of book, 'each leaf being signed by the notary and

'witnesses,' an enactment which was strictly complied with in the sasine 1773; and that the statute 1686 is altogether independent of, and was not repealed or qualified by the act 1696, is clear from the latter only requiring that the witnesses should subscribe the last page of the deed, whereas the former ordains that the witnesses to a sasine shall sign every page of it; a form which is at this day indispensable.

No 234

The act of sederunt 1756 is inaccurate, in supposing that the act 1696 regulates the subscription of sasines.

THE COURT, on the grounds stated for the complainer, 'found the respondent was not entitled, in virtue of his titles claimed upon, to be enrolled in the roll of freeholders for the shire of Forfar; and therefore granted warrant to, and ordained the Sheriff-clerk of the said shire to expunge his name from the said roll.'

For the Complainer, *Lord Advocate Dundas, Solicitor-General Blair, Geo. Fergusson, Arch. Campbell, jun. Alt. H. Erskine, Hay, Mat. Ross, Ad. Gillies, Geo. Robertson Scott. Clerk, Home.*

R. D.

*Fol. Dic. v. 3. p. 431. Fac. Col. No 207. p. 491.*


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DIVISION VI.

Summary Complaint to the Court of Session.

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S E C T. I.

Who must be called in a Summary Complaint.—Service of a Complaint.—To whom Competent.—Within what time Competent.—Whether a separate Complaint must be preferred by each Complainer.

1745. February 13. DICKSON of Kilbucho against GIBSON of Boreland.

GEORGE GIBSON of Boreland standing on the roll of freeholders for the shire of Tweedale, a complaint was given in against Thomas Gibson of Boreland, which being ordered to be served, an execution was returned also against Thomas.

No 235.

A complaint was, by mistake, served on Thomas