

No 14.

settlement, but had only signed the call by herself or proxy, it is believed that would have been sufficient, *per se*, to oblige her to pay her proportional share of the necessary expense, the joining in such an affair being a tacit entering into a society for that particular, which subjects every member thereof to his quota of the necessary charges; but it was improper to argue the general point here, as the proxy founded on bears expressly to do every other thing necessary. Now, the only thing requisite in that affair, besides the voting for and signing a call, was the adjusting the proportion by which the charges, in obtaining that settlement, were to be paid by each individual who concurred therein, and laying the same out reasonably; all which has been done in this case.

THE LORDS found Lady Houston not liable.

*C. Home, No 86. p. 140.*

No 15.

An estate being bought under an obligation to re-dispose lands to the value of 6000 merks, or 300 merks of yearly rent, being a forty shilling land, or so much more as should make a forty shilling land, that the seller might retain a qualification to vote for a member of Parliament; the obligation was found to subsist notwithstanding the statute taking away the qualification on that extent.

1745. January 8.

MACLAUHLAN of Auchintroig *against* MACLAUHLAN of that Ilk.

MACLAUHLANS, elder and younger of Auchintroig, sold their estate to Maclauchlan of that Ilk, by disposition, in which are these clauses, "Reserving forth from this present disposition to me the said John Maclauchlan, elder, a yearly annuity of 300 merks yearly, payable to me in liferent, out of the first and readiest of the whole rents of the said lands, by the said Lauchlan Maclauchlan his said obligation of this date, and to me the said John Maclauchlan, younger, my heirs and successors in fee."

There is an obligation on Maclauchlan in these words, "To pay to the said John Maclauchlan, elder, and to me, his son, in fee, an yearly annuity of 300 merks Scots, and that out of the first and readiest of the rents of the lands.

Then follows this clause, "And sicklike, the said Lauchlan Maclauchlan, in terms of the foresaid disposition, because of the said John Maclauchlans their discharging the sum of 6000 merks Scots, as a part of the foresaid 28,000 merks (the price) to be applied towards payment of the said yearly annuity of 300 merks, mentioned in the said disposition; and in respect thereof, and for the benefit of a free baron, in favours of the said John Maclauchlan, younger, which he cannot obtain unless a part of the said lands equivalent to that said annuity of 300 merks be made over to him, for payment to his said father of the said yearly annuity; therefore, the said Lauchlan Maclauchlan freely subjects and submits himself to the determination of Mr John Macleod of Muiravonside, Advocate, on his part, and the said John Maclauchlan, younger, freely submits himself to the determination of Mr Nicol Graham, of Gartmore, Advocate; and in case of the decease of either of them, to any other to be chosen for that effect, to allocate and take off from the

body of the said lands, as much as will yearly pay the said annuity of 300 merks; and if these lands so taken off shall not make up a forty shilling land, so as the said John Maclauchlan, younger, may be a free baron; in that case, the said judges shall determine and make up the same; with power to them, in case of variance, to make choice of an oversman; and whatever he and they shall determine, they shall abide thereat; providing always, that the said lands so taken off, shall be subjected in payment of the foresaid yearly annuity to Auchintroig, elder, and to his wife's provision, the said Lauchlan Maclauchlan being hereby obliged to expedite a charter of the lands so to be allotted to the said John Maclauchlan, younger, on the said Lauchlan's own charges, and that how soon he obtains his own charter."

The clause is thus shut up, "And in regard the foresaid lands so to be taken off, are in full of the liferent above mentioned, for which the foresaid 6000 merks is discharged; therefore, if they shall incline to sell of and dispoise their said liferent and fee, they, by their acceptation hereof, oblige themselves to dispoise back again the said allotted lands to the said Lauchlan Maclauchlan, for payment by him of the said 6000 merks allenary."

The LORD ORDINARY, in a process, at the instance of Maclauchlan, younger, of Auchintroig, to have lands set off to him in property, found, 17th January 1744, "That by the agreement, the setting off lands to the pursuer, to the extent of 6000 merks, being to have been done by arbiters; and that these arbiters having been required to set off lands to that extent, and refusing; and further, that it appearing by the contract, that the design of setting off lands to that extent, was in order to entitle the pursuer to a vote in chusing a member to represent in Parliament, which was now become impracticable; therefore, for these reasons, refused to give any commission to persons to set off lands to the pursuer, to the extent of 6000 merks." And the LORDS, 28th November, adhered.

Auchintroig reclaimed, and urged, That by the bargain, he was to have lands set off in property, and that he was not obliged to be content with an annuity, which was not sufficiently secured.

THE LORDS, 19th December 1744, found, That notwithstanding it was now impracticable to set off lands of the barony of Auchintroig, so as to entitle the pursuer to a vote as a freeholder for a member of Parliament; yet the defender was obliged to set off lands to the pursuer to the extent of 300 merks yearly. And this day they refused a reclaiming bill, and adhered.

Act. A. Masdowall.

Alt. J. Macleod.

Clerk, Forbes.

D. Falconer, v. 1. p. 39.