

lands, *unaccountably*, for the use of his money. But it is no where required, that this use shall commence at the same time that the money is advanced. And where a sum is to be lent in this way, on an estate subject to a liferent, or other temporary incumbrance, the lender, it is to be presumed, will frame his bargain in such a manner, that the produce of the lands, for the period during which he is entitled to possess, shall, on the whole, afford to him a sufficient compensation for his being deprived, during a certain time, of that part of his yearly income. In the case of Sir James Colquhoun against Hamilton, the qualification does not seem to have been founded on a proper wadset, like the present, but on a disposition in security; and, at any rate, the more recent determination of 23d February 1774, Mr James Colquhoun against the Freeholders of Banffshire, No. 132. p. 875c. was agreeable to the argument maintained for the respondent.

A majority of the Court were of opinion, that such a wadset as the one in question did not give a freehold qualification.

THE LORDS found, "That the freeholders did wrong in admitting Mr Blair to the roll, and ordered his name to be expunged," &c.

Mr Blair preferred a reclaiming petition, upon which, however, in consequence of certain subsequent proceedings, it became unnecessary to give any determination.

Act. Dean of Faculty, Wight, Hay, et alii.

Alt. G. Fergusson, Tait, et alii.

Clerk, Gordon.

C.

Fol. Dic. v. 3. p. 416. Fac. Col. No 66. p. 119.

SECT. III.

Nominal and Fictitious.

1745. July 30.

THE FREEHOLDERS of KINCARDINESHIRE *against* BURNET of Crigie.

No 135.

BURNET, Elder of Crigie, disposed part of his estate to his eldest son, and he gave a charter thereof to his father, to be held of him blench.

Objected to the title of the son to stand on the roll of electors for the said shire, That he had no real interest, but that his title was fictitious, nominal and created on purpose to make a vote; and, therefore, ought not to be sus-

No 135.

tained, in terms of the statute *anno 7mo Georgii II.* and there was a difference betwixt voting on a superiority and this case, where the superiority was made on purpose, and vested in an eldest son, who being to succeed to his father in the property, could not have so much as the casualty of entering heirs.

Answered, That a superiority was a good title, and the interest here, of how little value soever, was real, as he did not hold it for the behoof of any one else, nor was under any obligation to denude.

THE LORDS repelled the objection.

Act. *Burnet.*

Alt. *H. Home.*

1746. *June 19.*—IN this question, wherein the determination of the Court, 30th July 1745, sustaining the respondent's title, is already observed, a reclaiming petition was presented and answered, in which what most weighed was, that the claimer of a vote behoved to depone that he had not made any disposition of the lands or rents thereof, or any promise for that effect, other than appeared by the contents of the rights under which he claimed.

THE LORDS altered their interlocutor, and sustained the objection.

Petit. *Ferguson.*

Resp. *H. Home.*

Clerk, *Gibson.*

Fol. Dic. v. 3. p. 417. D. Falconer, v. 1. p. 127. & No. 118. p. 146.

* * * Lord Kames reports this case.

1746. *June 19.*—WILLIAM BURNET of Crigie, intending to qualify his son to be put upon the roll of freeholders in the county of Kincardine, disposed to him certain lands; and the son expedite a charter under the Great Seal, and granted a charter to his father of the same lands, to be held of him for payment of a blench-duty of two pennies Scots, *si petatur tantum.* This qualification was called in question by a complaint laid upon the statute, at the instance of some of the freeholders of the shire. And the *objection* against it was, That it is manifestly collusive, and upon the statute *anno 7mo Geo. II.* a nominal or fictitious estate, created in order to enable the young Gentleman to vote for a Member to serve in Parliament.

In answer to this objection it was *pleaded,* That it is not relevant to say, that a man's title to an estate is created in order to procure a vote; for such titles are created every day, where the principal view of the purchaser is in order to have a vote; but, in terms of the statute, it must be a nominal or fictitious title, created in order to a vote. Now, it is clearly expressed in the other clauses of the oath of trust, what a nominal or fictitious title is, *viz.* 'Where the person in the fee is under an obligation to re-dispone; and, consequently, holds the estate depending on the will of another, or is under an obligation to make the rents and profits furthcoming to another; and, con-

“sequently, does not hold the estate for his own use and benefit.” And to apply this to the present case, it may be true that Mr Burnet’s estate affords him little rent or profit; but then it is likewise true, that he enjoys all the rents and profits which arise out of that estate, and that he is not bound to account for these rents and profits to any one, nor stands under any obligation to reconvey the estate. So that it cannot be qualified in terms of the statute, that his title is nominal or fictitious; though it may be true, that the principal or only intendment of the transaction was to entitle him to a vote.

“THE LORDS first repelled, and afterwards sustained, the objection.”

Rem. Dec. v. 2. No. 75. p. 116.

No 135.

1746. July 30.

FREEHOLDERS OF DUMFRIES-SHIRE *against* FERGUSON of Craigdarroch.

FERGUSON of Craigdarroch stood on the roll of freeholders of Dumfries, as being superior of the two-and-a-half merk land of Dunreggan.

Objected, That William Fergusson of Craigdarroch had, *anno* 1627, disposed these lands, to be held of himself feu for 16 merks Scots, for which feu-duty he, at the same time, granted a perpetual discharge, obliging himself to grant termly discharges as it fell due, if needful; so that he was only nominally superior.

Answered, That he retained still right to the other casualties of superiority.

Observed on the Bench, That this right could not be at that time created fictitiously to give a vote, but the intent was plain; the lands holding ward, could not be feued out, but at a competent avail; and, therefore, to salve this, a discharge was granted of the feu-duty contained in the charter.

THE LORDS repelled the objection.

Fol. Dic. v. 3. p. 417. D. Falconer, v. 1. No. 138. p. 173.

No 136.

A superior, although he had granted a perpetual discharge of the feu-duty, found entitled to vote.

1755. January 9.

THOMAS FORRESTER of Dunnovan, and Other FREEHOLDERS of Stirlingshire, *against* ANDREW FLETCHER, Esq; Younger of Salton, Lieutenant JAMES CAMPBELL, and DAVID GOURLY of Keadarroch.

ANDREW FLETCHER, Younger of Salton, Lieutenant James Campbell, and David Gourly, were, at the meeting for electing a Member to serve in Parliament for the county of Stirling, on the 17th of May 1754, enrolled in the roll of freeholders.

No 137.

A right of superiority of lands found to entitle