

1774. August 9.

ALEXANDER and ANDREW STUARTS *against* DANIEL CAMPBELL of Shawfield.

No 209.  
A freeholder cannot restrict his title of enrolment, unless a previous claim has been lodged for that restriction.

IN 1760, Mr Campbell was enrolled as a freeholder in the county of Lanark, as apparent heir in the barony of Thankerton to his grandfather, the person last infeft in it, and afterwards, having agreed to dispoſe the lands of Hallhill, a part of ſaid barony, to Major Alexander Stewart, did, for that purpoſe, expedite a charter under the Great Seal, *anno* 1772; and having diſpoſed the ſaid lands of Hallhill to Major Stewart in liferent, and himſelf in fee, and aſſigned the precept in the charter correſponding thereto, the Major was infeft in this liferent right of the lands of Hallhill; and Mr Campbell was infeft, in September 1773, in the whole remaining lands contained in the crown charter, and alſo in the fee of the lands of Hallhill, in virtue of the precept in ſaid charter. And, in conſequence of this tranſaction, there was obtained from the Commiſſioners of Supply a decree of diviſion of the *cumulo* valuation of the barony, whereby a certain proportion was allotted to Hallhill.

At the laſt Michaelmas meeting of the county of Lanark, 5th October 1773, the minutes bore, 'That Mr Campbell of Shawfield repreſented to the meeting, ' that he was enrolled a freeholder on the 17th January 1760, as heir-apparent ' to the deceased Daniel Campbell his grandfather, in all and hail the lands and ' barony of Thankerton, lying in the pariſh of Bothwell; that he was deſirous ' to reſtrict his title of enrolment to certain ſpecified lands, being part of the ' ſaid barony, and ſtanding valued in the valuation of the book of the county, ' as therein mentioned; and that the meeting having conſidered Mr Campbell's ' requeſt, and certificate produced, they reſtricted his enrolment, and ordained ' the ſame now to be on the above mentioned lands, and his name to remain in ' the ſame place of the roll where it now ſtands; whereupon inſtruments were ' taken.'

Messrs Stuarts, two of the freeholders, preferred a complaint to this Court, praying to find, that Mr Campbell ought not to have been continued upon the roll of freeholders, and to ordain him to be expunged therefrom.

The complaint was laid partly upon objections to Mr Campbell's titles, and partly upon irregularities ſaid to have been committed in the diviſion of the *cumulo* valuation between the lands alienated and thoſe retained by Mr Campbell. To each of theſe, answers were made; and, at the ſame time, the competency of the complaint, in the way it has been laid, was diſputed.

Upon this point, *pleaded* for Shawfield;

The adjustment of the rolls of freeholders is entirely regulated by the ſtatute of the 16th of his late Maſteſty; and the powers of this Court, which has no radical jurisdiction in that matter, can go no further than the ſtatute has thought proper to carry them. And, from the clauses of the ſtatute which authoriſes complaints to this Court againſt the proceedings of a court of freehold-

ers, it is evident that there is nothing therein that can support the present complaint; on the contrary, it is very clear therefrom, that the present claim is altogether incompetent and inadmissible.

It is clear, that, when a person is put upon the roll of freeholders, and when no complaint is preferred to this Court against that enrolment, within four calendar months of the meeting of enrolment, that he must remain on the roll thereafter until an alteration of his circumstances is allowed of by the freeholders, as sufficient for striking him off the roll; and whoever intends to object to him, must lodge his objection in writing two months before the Michaelmas meeting.

Two things, therefore, are necessary, in order to obtain the expunction of a freeholder standing on the roll; in the *first* place, that there shall be a sufficient objection, arising from alteration of circumstances; *2dly*, That this objection shall be lodged two months before the meeting.—That the respondent has undergone an alteration of circumstances is very true, in so far as he has given off a small pendicle of his estate; but it is equally true, that the objection from thence arising is a very insufficient one. *2dly*, No objection at all was lodged previous to the meeting, as required by law; and this being the case, the respondent, who has stood upon the roll since 1760, cannot, without a repeal of the foresaid statute, be expunged.

*Answered*; With respect to the exception taken to the competency of the complaint, as having no authority from the statute of the 16th of the late King, the question is new; and though the complainers will readily admit that it does not, at first sight, seem to fall within the express words of the above-mentioned statute, the complainers contend that the respondent is, by his own fact and deed, barred, *personali exceptione*, from insisting upon this objection to the competency of the complaint; and that, even allowing the wrong complained of, by continuing the respondent upon the roll, upon a restricted insufficient qualification, not to come within the express letter of the law, however obviously within the purview thereof; for redress of every wrong committed by these Michaelmas meetings in matters of enrolment, it is *pars-judicis* to find, the law comprehends every such case as the present.

For though the complainers may safely admit, that a freeholder, standing upon the roll, is under no positive obligation, upon his being denuded of part of the lands in right of which he stood formerly enrolled, to apply to the freeholders to restrict his enrolment to those parts of his original qualification which he still retains, in respect that, upon such alteration of circumstances, it is competent to any other freeholder, upon objections timeously lodged with the Sheriff-clerk, to insist that the freeholder enrolled shall, in respect of the change of circumstances, be struck off said roll, in case the lands retained do not amount to a legal qualification; yet where, as in the present case, the freeholder enrolled, who has aliened part of his original qualification, does *ex proprio motu* apply to the Michaelmas meeting to have his qualification and en-

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rolment restricted to the lands reserved, it is incumbent upon him to satisfy the meeting, by proper legal evidence, that the lands reserved are of such extent or valuation as entitles him to continue on the roll; and, consequently, that it must be competent to the freeholders to judge whether the remainder entitles him to be continued upon the roll or not; and that the same rules must take place, in supporting the legality of the restricted qualification, as would have taken place in the case of a split new enrolment; that, as supposing the freeholders to have done wrong by striking him off the roll, notwithstanding that his reserved lands amounted to a legal qualification, it must have been competent for him to have applied to this Court, by complaint, for redress of that wrong, under the authority of the above-mentioned statute; so, upon the contrary supposition of the freeholders having sustained the restricted qualification, however improperly, as sufficient to continue him upon the roll, upon the footing of that restriction, it must be equally competent to the other freeholders to sue for redress of that wrong in the same form and manner, by complaint to the Court, as would have been competent to the freeholder himself in the other case. If this were not to be allowed, the most absurd consequences would follow.

*Replied*, in answer to the plea that the respondent had created a jurisdiction in the freeholders, by claiming a restriction of his original title of enrolment; Though a freeholder should rise up and discover to the meeting, that he has denuded himself of one half or two thirds of his former titles, this will be no ground for turning him *de plano* off the roll, though it will very naturally lead them to enquire whether he has reserved a sufficient qualification or not; and if they find that it is insufficient, they may lodge an objection to him two months before next Michaelmas, and then bring his title, in regular form, under trial.

The judgment of the Court was as follows;

‘THE LORDS find the restricted enrolment in favour of the respondent, at Michaelmas last, was inept, and not in terms of law; but, in respect no objection was lodged upon the alteration of circumstances, in terms of the act of the 16th of the late King, they dismiss the complaint and assoilzie the respondent; reserving to the complainers still to object to the respondent’s title to continue upon the roll, as accords.’

Alt. Dean of Faculty.

Alt. Hay Campbell.

Clerk, Campbell.

Fac. Col. No 134. p. 355.

1775. December 15. Colonel ROBERT SKENE *against* JOHN ADAM.

No 210.  
The omission  
to lodge an  
objection to  
one’s author’s

AT Michaelmas last, Colonel Skene claimed to be enrolled as a freeholder in the county of Kinross, upon an unquestionable title, derived from Mr Laurence Craigie, writer to the signet, to certain lands, which made a part of the qualification on which his author stood enrolled.