

erection of a burgh of barony, the benefit of the baron is chiefly regarded ; and therefore, the Magistrates of such a burgh have all the powers of a baron acting within his own barony. A royal burgh is chiefly erected for the benefit of the burgesses ; and therefore, the Magistrates have no power by any by-laws to abridge their privileges. But the Court waved giving any judgement upon this point, finding a more obvious medium upon which to determine the cause. They considered that no direct detriment was done to the pursuers by this oath ; and therefore, that they had no direct interest to carry on this process ; that whatever consequential interest they may have, such interest is no sufficient foundation for an action. And accordingly the COURT refused to sustain the action.

No 7.

Fol. Dic. v. 3. p. 367. Sel. Dec. No 97. p. 134.

1760. February 5.

DANIEL CAMPBELL of SHAWFIELD and WILLIAM GRAHAM of GARTMORE *against*
WILLIAM MUIR of CALDWALL.

BOYD PORTERFIELD of that ilk was vassal to the Earl of Glencairn in the lands of Nullishill, Gibliston, and others, in the shire of Renfrew.

The Earl disposed the superiority of these lands, in 1757, to his vassal ; and upon the procuratory in that disposition Mr Porterfield expedited a charter under the Great Seal ; but immediately thereafter, and without taking infestment on the charter, Mr Porterfield disposed the superiority of one part of these lands to Daniel Campbell of Shawfield in liferent, and to Lord Glencairn, and his heirs, in fee, containing an assignation to the charter, and precept of sasine therein, so far as related to that part of the lands ; and he, at the same time, disposed the other part of the said lands to William Graham younger of Gartmore in liferent, and Lord Glencairn, and his heirs, in fee, containing the like assignation.

Messrs Campbell and Graham having obtained themselves infest on their dispositions ; and their several proportions of the said lands being ascertained, by the Commissioners of Supply of the county, to be upwards of L. 400 Scots of valued rent, they both entered their claims to be enrolled in the roll of freeholders of that county, at the Michaelmas meeting 1759. Mr Muir of Caldwell stated sundry objections to the titles produced by them ; and these objections were sustained by a majority of the meeting ; upon which they complained to the Court of Session.

Objected by Mr Muir ; imo, The superiorities in question are part of the entailed estate of Glencairn ; and the Earl is, by the tailzie, which stands on record, laid under an express prohibition to sell or alienate any part of the tailzied estate, with the usual irritant and resolute clauses ; so that the Earl was

No 8.

Not competent to a meeting of freeholders to reject a claimant's title, on account of his author's being barred from disposing by a strict entail.

No 8. disqualified from granting, and the claimants from acquiring, that right under which they claim. Neither can they take any benefit from that clause in the late statute abolishing ward-holdings, whereby superiors possessed of entailed estates are allowed to convey their entailed superiorities to their vassals; for it appears from the preamble of the statute, that the object which the Legislature had in view, was, 'the enfranchising of vassals of subject-superiors, by causing them to become immediate vassals of the Crown;' which was looked on as a matter of public benefit; and therefore it is enacted, 'That it shall be lawful to any person possessed of an entailed estate, to sell to his vassal the superiority of his own lands, and thereupon to resign such lands for new infestment to be granted to the vassal.' No sale or transmission of any superiority by an heir of entail can be good, unless it is executed in terms of this statute, and agreeable to the spirit and intention of it. In the present case, the superiorities of Mr Porterfield's lands were not sold and conveyed to him, in order to enfranchise and render him the vassal of the Crown; but, on the contrary, the evident and sole purpose of the whole transaction, was to substitute several superiors over Mr Porterfield's estate, in place of the Earl of Glencairn; and though the disposition was made to Mr Porterfield in the first place, in order to save appearances, it is plain, that the superiority was not intended to remain with him, as he immediately thereafter conveyed it to two of my Lord's nephews in liferent, and to the Earl himself in fee; and Mr Porterfield did not so much as take infestment on his charter, which the act of Parliament seems to require.

2^{do}, Mr Porterfield the vassal holds the property of these very lands under a strict entail; and therefore supposing the superiority to have been properly conveyed to him, in terms of the statute abolishing ward-holdings, it was not in his power afterwards to split that superiority, whereby to create a burden and servitude upon his tailzied estate, contrary to the prohibitions of the entail, as well as to the plain meaning and intention of the statute.

3^{to}, The qualifications of these claimants are plainly nominal and fictitious, and, by act 7th of Geo. II. cannot entitle to a vote.

4^{to}, As the charter from the Crown granted to Boyd Porterfield contained one joint *reddendo* for the whole lands separately conveyed to the two claimants, it was not in Mr Porterfield's power by assigning away the precept, to split or divide this right, without consent of the Crown.

5^{to}, The claimants had produced only a certificate of their valuation under the hands of two Commissioners of Supply, and their clerk; whereas the whole proceedings of the Commissioners, in making the valuation, ought to be produced, in order that it may appear with certainty, whether the valuation is rightly ascertained. And, *separatim*, the division was completed long subsequent to the date of the claims, and therefore cannot be founded on; because the claim ought to set forth the whole titles and other documents necessary to instruct it.

Answered by the claimants, to the *first* objection ; It is *jus tertii* to the meeting of freeholders, to move this objection founded on the tailzie of Glencairn. If Lord Glencairn has contravened the prohibitions of that entail, it is competent only to the heirs of tailzie to take advantage of such contravention. A conveyance granted by an heir of tailzie, however strictly bound down, is good against every mortal but the heirs substituted in that tailzie, who may either challenge or not as they think proper ; and if they choose to acquiesce, no third party has a title to complain. Far less can a meeting of freeholders stir such objections. All that they are to inquire into is, whether lands of the holding and valuation required by law are vested in the claimant by charter and sasine ? and whether the claimant is in possession of the right under which he claims ? But they have no title to inquire into objections, or grounds of reduction, which may be competent to heirs of entail, creditors, or other third parties.

Besides, there is no relevancy in the objection ; for the superiorities in question were sold by Lord Glencairn to Mr Porterfield in the precise terms of the act abolishing ward-holdings, which allows the possessors of entailed superiorities to sell them to their vassals, upon securing the price for behoof of the heirs of entail. It may be very true, that the chief object of the Legislature, in giving that allowance, was the enfranchisement of the vassal ; but after having once purchased the superiority, the law has left him at absolute liberty either to retain or dispose of it at pleasure. Neither is it necessary that infeftment should in the first place be taken in the person of the vassal. This would answer no other purpose but to increase expense. The law only says, that the superior may resign the lands in favour of the vassal for new infeftment ; but the disposition and procuratory to be granted to him, is not limited to his person, so as not to be transmissible to heirs or assignees. If he dies after receiving a disposition, his heir may make up a title to it, and expedite the charter and infeftment ; so may his assignee, if he thinks fit to assign it.

To the *second* objection ; It was equally incompetent, and *jus tertii*, to the meeting of freeholders, to found any objection upon the tailzie of Mr Porterfield the vassal. And the objection itself is irrelevant ; for supposing the property to be entailed, the superiority afterwards acquired cannot be brought under the fetters of that entail, without some act or deed to that purpose. The heirs of entail had no *jus quæsitum* to the superiority ; and therefore Mr Porterfield was at full liberty to dispose of it.

To the *third* objection ; The titles of the claimants are neither nominal nor fictitious ; each of them has a true and real estate, which he may dispose of at pleasure, and which may be attached for his debts. They are entitled to the rents, profits, and emoluments of their several estates during their lives. They are under no promise or backbond, nor do they hold these superiorities in trust for any person whatever. It is no objection for any claimant, that his chief

No 8. view in purchasing the right under which he claims, was to entitle him to the valuable privilege of voting for a member of Parliament, unless it can also be proved, that his right is nominal and fictitious, *i. e.* not a real estate in him, but held in trust for some other person. Neither does the law make any distinction, whether a superiority yields more or less profit to the superior. If the lands were held of him, though for payment only of a blanch duty of two pennies, he is still the only vassal of the Crown in these lands, and as such entitled to a vote, if the lands be of the valuation required by law.

The *fourth* objection is equally ill founded. When the Crown, or other superior, grants a precept to assignees, this implies a consent on the part of the superior, to the grantee's disposing of the lands in whole or in part; and consequently to his assigning the charter, and precept, as relative thereto, in favour of third parties. Nor is the superior thereby prejudiced; for the whole lands, and every part thereof, are still liable in payment for the whole *reddendo*, however split among the different purchasers.

As to the *fifth* objection, The division of the valuation was made at a general meeting of the Commissioners, upon a proof adduced before their committee, reported to them. The decret of division is produced in process, and a certificate was laid before the Michaelmas meeting, of the amount of the valuation stated in the books conform thereto, which is all that is usually done. It is unnecessary to lay the proceedings of the Commissioners before the meeting: for it has been found, that the freeholders have no power to canvass or review these proceedings. Neither is it any objection, that the decret of division was not quite finished when the claim was lodged; as it was in fact finished long before the Michaelmas meeting.

'THE LORDS repelled the objections offered to the titles produced for the claimants, and ordained them to be added to the roll.' See MEMBER OF PARLIAMENT.

Act. Lockhart & Ferguson.

Alt. Lord Advocate.

I. C.

Fol. Dic. v. 3. p. 367. Fac. Col. No 212. p. 383.

* * * This case was appealed;

THE HOUSE OF LORDS, 1st December 1760, 'Ordered and adjudged, that the petition and appeal be dismissed; and that the two interlocutors therein complained of be affirmed.

No 9.
At a meeting
of free-holders,
it was
objected to a

1781. February 17. CAMPBELL against SLOAN LAURIE.

MR CAMPBELL held sundry lands under one tenure, comprehending the two-merk land of Horsecleugh, of the Earl of Dumfries, who conveyed the liferent