

entitled to vote upon that estate, although perhaps a commonty, which, as being *accessorium sequitur suum principale*, should be computed in the valuation.

No 45.

“ THE LORDS sustained the objections to Captain Pollock’s vote, and granted warrant for expunging him from the roll.”

Act. *Wa. Stuart and Lockhart.*Alt. *Garden and Miller.*Clerk, *Tait.*

I. C.

Fol. Dic. v. 3. p. 407. Fac. Col. No 218. p. 396.

1790. February 25.

The Honourable HENRY ERSKINE *against* The Honourable JOHN HOPE.

IN the original valuation of the county of Linlithgow in the year 1667, as well as in the subsequent one in 1687, the whole lands of Little Blackburn were rated at L. 366 : 13. But after this, for much more than forty years, that parcel of those lands, called “ Napier’s part of Little Blackburn,” was separately entered in the books kept by the Collector of the Land-Tax, being rated at L. 210 : 11 : 4 ; and the tenants of the lands paid a corresponding share of the public burdens.

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Proof of the valued rent, by long use of paying the land-tax, where no decree of division appears, sustained.

It also appeared, that, in the county of Linlithgow, till a very late period, the more formal method of dividing a *cumulo* valuation by a decree of the Commissioners of Supply, proceeding on a proof of the real rent, and engrossed in their minutes, had seldom or never been thought of. The whole minutes of the Commissioners, from the year 1687, were extant ; but no traces could be found of a regular division of the valued rent of the lands of Little Blackburn.

Mr Erskine having acquired the superiority of Napier’s part of Little Blackburn, produced to the freeholders of the county, at the Michaelmas meeting in 1789, a certificate from two Commissioners and the Clerk of Supply, bearing, that these lands were rated at L. 210 : 11 : 4.

Mr Hope, a freeholder in the county, objected to this evidence ; and

Pleaded, Where a proprietor cannot shew that he is entitled to vote, in consequence of the old extent of his lands, he must have recourse to the original valuations, made up in every county by the Commissioners of Supply ; or where the lands belonging to him have at first been valued *in cumulo* along with others, he must ascertain the separate valuation of his property by a regular decree of division, pronounced by a *quorum* of the Commissioners, in whom alone is vested the power of proportioning the land-tax among the different Crown-vassals ; Bankton, b. 4. tit. 9. § 3. ; Wight on Elections, p. 183. 184. 197. 200.

In the proceedings, too, before the Commissioners of Supply, the payment of the land-tax, however uniform, cannot be considered as an unerring rule. This may have arisen from some erroneous calculation, from the wish of a par-

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ticular proprietor to magnify the valued rent of his lands, for political purposes, or from other causes. And although, where the records of the Commissioners of Supply cannot be found, it may have been thought just, to hold the payment of the land-tax as sufficient evidence of the valued rent; because it may, in such a case, be presumed that it was authorised by a decree of division; the same determination here would be quite unjustifiable; 1768, Hogg of Newliston against The Freeholders of Linlithgowshire, *infra, h. t.*; 10th March 1774, Ross against Sir Roderick M'Kenzie, *infra, h. t.*; 1776, Nisbet of Dirleton against Lindsay, See APPENDIX.

Answered, Neither by the enactment of 1681, nor by any of those which followed, respecting freehold claims, has any particular kind of evidence been required for ascertaining the valued rent of lands giving a right to vote. It is sufficient, that the claimant shall be publicly infeft "in lands liable in public burdens, for his Majesty's supplies, for L. 400 of valued rent."

While the practice of splitting estates, in order to create freehold qualifications, was unknown, very little attention was paid to this circumstance. Even when the Commissioners of Supply proceeded in a formal manner, to distinguish the separate values of those lands which had been originally included in one *cumulo*, this was rarely entered in the record. After the division was made, it was thought sufficient, if the Collector of Supply inserted the separate values of each parcel in the books kept by him. And hence, in the county of Linlithgow, as well as in many others, it has often happened, that where there is the strongest reason for believing that a decree of division has been pronounced, no traces of it are to be found in the books kept by the Commissioners of Supply.

For these reasons, a distinction has been justly made between those cases where the land-tax has, till lately, been paid by the vassals of the Crown, under a *cumulo* valuation, and those in which, from a very remote period, it has been paid separately for different tenements, even although these may appear under one general article in the original books of valuation. In the former, in order to ascertain the valued rent of each tenement, a regular decree of division by the Commissioners of Supply may, with propriety, be required; whereas, in the latter, it being reasonable to presume that a proper division has taken place, the terms of the decree may be ascertained by the uniform payment of the land-tax, this being the standard which, if no objection is stated by those more immediately interested, the Commissioners of Supply, in pronouncing any new decree, would certainly adopt as the rule of their proceedings. A contrary practice, in circumstances similar to the present, would be productive of much unnecessary embarrassment. Act 1681, Innes against Sutherland, No 50. p. 8642.; 10th February 1781, Traill of Holland against Haldane, *infra, h. t.*; Wight on Elections, p. 183.

The freeholders having refused to sustain the evidence here founded on by

Mr Erskine, he preferred a complaint to the Court of Session, which was followed with answers, replies, and duplies.

No 46.

“ THE LORDS found, that the freeholders had done wrong, and ordered Mr Erskine to be admitted to the roll.”

Act. *Robertson, Cathcart, et alii.*Alt. Lord Advocate, *Williamson, et alii.*Clerk, *Gordon.*

C.

Fac. Coll. No 122. p. 236.

1790. December 9.

DICKSON against DOUGLAS.

No 47.

OBJECTED, That a decree of division had been produced, without any proof of the real rents, except by parole testimony of one of two witnesses; the other, who was the tenant of the lands, having neither sworn to the *quantum* of the rents, nor signed the tacks, as relative to his deposition, though he swore that the rents, specified in his tacks, were the real rents which he paid. But the rents contained in his tacks agreed perfectly with those deponed to by the other witnesses.—THE LORDS found, that the decree of division being formal, must be held good till set aside by reduction.—See APPENDIX.

THE same found, though a process of reduction of the decree had been actually brought, and was depending at the time when the objection was made; December 1790, Cheap against Morehead.—See APPENDIX.

Fol. Dic. v. 3. p. 407.

1791. February 23.

FREEHOLDERS of ORKNEY against JOHN TRAIL.

No 48.

At a meeting, in July 1790, for electing a Member of Parliament for Orkney and Zetland, Mr Trail was enrolled upon a qualification, which in part consisted of the valuation of certain superior duties, payable to Sir Thomas Dundas, to whose predecessor, the Earl of Morton, the Crown had granted them. In a complaint preferred against this enrolment, it was *objected*, That this part of the valuation ought not to have been admitted by the freeholders; and, in support of the objection, it was

A decree of valuation, *ex facie regular*, though liable to exceptions, is to be sustained, until set aside by reduction.

Pleaded, Before the general valuation, the duties payable out of lands that held feu of the Crown were not valued; or, at least, no supplies corresponding to them were paid to the Crown; so that the rents of Crown-vassals lands were valued *minus* the feu-duties. This appears from the act of Convention of 1643, and the act of Parliament of 1649, cap. 21.

Of lands feued by subject-superiors, the valuation was laid partly on the feu-