

1745. *January 19.* FREEHOLDERS OF LANARK *against* HAMILTON.

No 11.

A retour where the old extent is not distinct from the feu-duty, does not give a qualification.

HAMILTON of Wishaw produced a retour of his lands, wherein the old extent was not distinct from the feu-duty, and which bore the lands to be *ecclesiastica* :

It was found not to entitle him to a vote.

Hamilton of _____, had, in his own right, lands valued at L. 340, and had married one of three heirs-portioners, who had been infeft in lands valued at L. 73, and the two other sisters being dead, his wife was their apparent heir.

THE LORDS found he might join his wife's interest with his own to make up his valuation, but could not vote on her right of apparenacy.

Fel. Dic. v. 3. p. 405. D. Falconer, v. 1. p. 48.

1745. *February 5.*

COLQUHOUN of LUSS *against* The VOTERS of the SHIRE of DUMBARTON.

No 12.

Lands contained in one retour valued *in cumulo* in the *valent* clause, but having their separate values expressed in the descriptive, and the total agreeing, entitle the several heritors to vote.

The objection that the principal retour was not produced, but only an extract from Chancery, was repelled.

SEVERAL freeholders of the shire of Dumbarton, claimed votes in the election of a Member of Parliament, on their estates being retoured to forty shilling lands, in a retour of the dukedom of Lennox and barony of Kilmarnock, 25th April 1662.

Objected, That the principal retour did not appear, and there was only a copy of it in the Chancery books.

Answered, This copy in the books of Chancery is what in law is called a retour, and makes evidence in all Courts.

THE LORDS repelled the objection.

Objected to the heritors of the dukedom, That their lands, which are severally mentioned as of such a value in the descriptive clause, are only *in cumulo* valued in the *valent*, which, besides, exceeds the particular values in L1 : 10 : 8d., and so not agreeing with, cannot be supported by them.

Answered ; The difference is so small, as to be obviously only a mistake in the calculation.

THE LORDS sustained the retour.

Objected to the heritors of the barony, That the several lands mentioned in the descriptive clause, are only valued *in cumulo* ; and though these clauses agree, yet the mill and mill lands of Mewie are mentioned in both clauses without any value in the description, and make part of the *cumulo* valuation ; and if any part of this value is applicable to them, the several lands cannot be of the same value they are described.

Answered, Mills were not extended, and the mill lands, consisting of two acres, probably never were, besides the several lands are repeated in the *valent*, with their values in the same manner as in the description, and then the total value *in cumulo* is given in answer to the brieve.

THE LORDS sustained the retour, and repelled all the objections.

Act. *Lockhart*.

Alt. *H. Home & J. Campbell, jun.*

Reporter, *Kilkerran*.

Fol. Dic. v. 3. p. 403. D. Falconer, v. 1. p. 6F.

No 12.

1745. February 22. SIR MICHAEL STEWART *against* HUGH CRAWFORD.

HUGH CRAWFORD, writer in Edinburgh, standing on the roll of electors for the shire of Renfrew, an objection was made to his title, which the Lord Ordinary, before whom the complaint came, on advice with the Lords, sustained, on which he gave in a reclaiming petition, giving this account of the titles whereon he claimed to vote.

He is infeft in the fifty shilling land of Brown's Calderhaugh, the extent whereof appears by a charter of Queen Mary, 6th September 1559, as per register of charters, book 21. numb. 474, to John Brown of Coultermains.

Richard Brown of Coultermains was served heir in these lands to John, 21st June 1712; and, though his retour is lost, there remains an authentic document of it in the *responde* books in Chancery, book 3. where it is entered, as all other retours are, and bears the lands to be a fifty shilling land, which is supported by the tax roll of the shire, dated 20th January 1613, lying amongst the records in the Laigh Parliament House.

Further, Alexander Glen of Bar was, 23d January 1610, served heir to his brother in the two and a half merk land of Auchincreech, and fifty shilling land of Calderhaugh, ten shilling land of Langlee, ten shilling land of Cruicks and Johnshill, and ten shilling land of Knockbarmock; which is precisely the same description with the charter founded on, the glens holding feu of Brown of Coultermains; and this retour is recorded in Chancery, book 4. fol. 324; and in the descriptive clause, values all these lands at L. 4:3:4d. which agrees exactly with the other documents; but the *valent* retours them to be worth L. 22:16:8d. and 85 stone of cheese, viz. the feu-duty paid to Coultermains.

The petitioner *alleged*, That the meaning of the clause in the statute, enacting, That no person should be entitled to be enrolled on the old extent of his lands, unless such extent were proved by a retour prior to 16th September 1681, was, that no division since of the old extent should be sustained, and that no retour since should be held as sufficient evidence of the old extent. He *pleaded*, That retours were the lowest kind of evidence allowed by the act, but that better kind of evidence was not excluded; and frequently better evidence might be got than retours, as in this case.

No 13.

No other evidence but retours can be received of the extent of lands.