

## DIVISION IV.

## Decisions common to qualifications upon the old extent and valuation.

## S E C T. I.

Vassals in lands forfeited by the superior.—Fishings may be joined to lands to complete a qualification.—Proprietor *pro indiviso*.—Feu-dues payable out of church-lands.—Mortified lands sold.—To give a qualification there must be a feudal vassal in the lands.—Bodies corporate.—Minors.—Exchange of pieces of land.—Infestment in virtue of a clause of union, and dispensation in a Crown charter.—Burgage lands sold by the burgh.—Where the superior is unentered.—Person divested by a trust-deed.—The claim must describe the title for enrolment.—Eldest sons of Peers.—Charter granted by a factor *loco tutoris*.—Roman Catholics.—Officers of the Revenue.

1745. February 12.

LORD BRACO *against* The VASSALS of the Estate of Marischall.

## No 98.

Vassals of a forfeited estate are entitled to be on the roll of freeholders, so long as the superiority is not disposed of.

A COMPLAINT was given in, craving to have Gordon of Buthlaw, Gordon of Techmuiry, and Farquhar of Balmuir, struck off the roll of freeholders of the shire of Aberdeen, as being vassals of the forfeited estate of Marischall, the superiorities belonging to which, were, by an act George I. vested in the King, for the use of the public; in which case they remained till 25th March 1718, that they were vested in trustees to be sold for the use of the public, and what remained unsold on the 24th June 1724, were again vested in the King, to be sold by the Barons of Exchequer.

*Pleaded*; That the allowing these gentlemen votes proceeded on the not distinguishing the different capacities the King sustained, and in what capacity they held their lands of him, which was not as King, but as trustee for the public; so that though they held of the King, they could not be said to hold of the Crown; that the distinguishing mark of holding of the Crown was,

that the King could not interpose a superior between him and his vassal, and not his giving the infeftments; for in many cases he gave these to others than his vassals, viz. *supplendo vices*.

No 98.

*Answered*; That they behoved either to hold of the King or a subject; that the Earl Marischall's right was extinct by his forfeiture, and they were obliged to do all the services of vassals to the King; that it was a groundless distinction of holding of the King for the use of the public; and it might rather be said, all the King's rights were for the use of the public, though in some cases the trust was freer, in others he was more tied up; and a parallel instance occurred in those branches of the revenue, which were to be accounted for in Parliament; and yet the debtors in them were as much the King's debtors as where he had the absolute disposal; that the meaning of these estates being in the King for the use of the public, was explained by the first act relating to them, to wit, that the profits and proceeds thereof were to be disposed and applied to the use and benefit of the public, and for the case of his Majesty's good subjects, according to the direction of Parliament; but this had no influence on the holding.

It was *observed* on the Bench; That the vassals of regalities fallen into the King's hands for a time, were to be justified by his Judges, and attend his Parliaments, act 26th, Parl. 6. Ja. II.

THE LORDS sustained the qualifications to continue on the roll.

*Act. H. Home.*

*Alt. Maitland.*

*Fol. Dic. v. 3. p. 413. D. Falconer, v. 1. p. 73.*

1745. July 10.

FREEHOLDERS OF ABERDEENSHIRE against FORDYCE of Monkshill.

WILLIAM FORDYCE of Monkshill stood upon the roll of freeholders for the county of Aberdeen, as being infeft in the town and lands of Monkshill, valued at L. 80 Scots, and in two half-nets salmon-fishing, valued at L. 347, the whole extending to L. 427.

*Objected* to his title; That the act 1681 restricts the title to a vote to lands of 40s. old extent, or L. 400 valued rent; and the claimant has not lands to that extent or value, nor any lands contiguous to his salmon-fishing, but only a right of *jactus retis*.

It cannot be said every heritable right is comprehended under the term lands, nor yet every subject liable to the land-tax, as in England personal estates and offices are subject thereto, and with us feu-duties and teinds; feu-duties out of church-lands would not entitle the owner to be on the roll; and the late decision concerning teinds, was in the case of a person having bought

No 99.

Lands, with the valuation of a fishing, making up together the full valuation, entitle to vote.