

and Linlithgow, it would have been strange to have the law different in the shire of Perth.

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Fol. Dic. v. 3. p. 405. Kilkerran, (RETOUR.) No. 2. p. 497.

* * * D. Falconer reports this case.

ROBERT MACARA of Drimmie, standing on the roll of freeholders for the shire of Perth, and an objection being made to his title, he, to support it, appealed to a retour in the records of Chancery, 30th May 1667, of the fourth part of the lands of Drimmie, bearing them to be of value *per annum summam quinquaginta trium solidorum et octo denariorum, monetæ Scotiæ, et tempore pacis tantum*; and to be held feu, *pro solutione quinquaginta trium solidorum et octo denariorum, monetæ Scotiæ, cum parte martis et divoriiis debiti. et consuet. una cum duobus solidis, monetæ antedict. in novam augmentationem rentalis dict. terrarum*; and alleged that the value was distinct from the feu-duty.

Answered, That in lands holding feu of the King, the feu-duty is the extent, Craig, l. 2. D. 17. § 8. and the inquest in this case were in the wrong, in omitting out of their retour the augmentation, and the part of the mart; nor can prescription support it, so as to make the estate of less value, when the feu-duty is still paid; and the law determines these to be the same, *unus et verus canon est qui convenerat, et is extentus neque incrementum neque decrementum admittit, itaque pro eodem retornatur.*

THE LORDS sustained the objection.

Act. Scrimgeour.

Alt. D. Grème

D. Falconer, v. I. No. 191. p. 256.

1747. November 10.

KER, and other FREEHOLDERS of Berwickshire, *against* REDPATH and others.

KER of Moriston complained of the proceedings of the freeholders of Berwickshire, met on the 6th instant for the choice of a Member to serve in Parliament; *first*, Of the last Commissioner, who, in course, did act as Preses in the choice of Preses and Clerk, for that he refused, though required, before he proceeded to call over the roll for the choice of Preses and Clerk, to administer the oaths appointed by law to the whole freeholders present; and concluded, that, on account of that defect, the whole subsequent proceedings of the meeting were void.

This the LORDS "Found not to fall under the cognizance of the Court."

He complained that Redpath of Angleraw had been admitted, though his

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Found in conformity with Freeholders of Lanark against Hamilton, No. 11. p. 8572.

The apparent heir of the eldest of a number of heirs-portioners not entitled to be enrolled as a freeholder.

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qualification was no other than a retour in 1666, wherein the old extent and the feu-duty are the same.

“ This objection was sustained, and Angleraw appointed to be struck off the roll.”

He further complained, that Mr James Primrose was admitted, although his qualification was no other than as apparent heir of his mother, the eldest of three heirs-portioners in a forty-shilling land.

This the LORDS “ Sustained, and appointed him to be struck off;” notwithstanding it was *argued* from the Bench, That each heir-portioner is entitled to the subject *in solidum*, and that only *concurso partes faciunt*, in so much, that should an heir-portioner serve to her predecessor in the whole subject, her sister deceasing, she would not need to make up a new title; and that as dignities and superiorities, which are indivisible, go to the eldest heir-portioner, so should the title and qualification to vote, and that the analogy also from the case of adjudgers applied; in respect it was by others *answered*, That, as to adjudgers, the case is determined by the statute 1681; and as little did the case of dignities and superiorities apply, as those must necessarily be somewhere; whereas, the right of voting may be extinct and nowhere; and so they thought the case to be where a forty-shilling land fell to three heirs-portioners, even though it should be admitted that each might serve *in solidum*, which yet was not thought clear to be the proper service of heirs-portioners.

Fol. Dic. v. 3. p. 405. Kilkerran, (FREEHOLDER.) No. 1. p. 225.

* * D. Falconer reports this case.

MR JAMES PRIMROSE, Minister of the Gospel at Crichton, stood upon the roll of freeholders for the shire of Berwick, on the title of the lands of East-Moriston.

Objected, That John Moffat of East-Moriston deceased, leaving three sisters, heirs-portioners, and the claimant, the son of the eldest cannot stand upon the roll, having no right to the other two shares, which, together with his own, make up the extent.

Answered, That, as the first adjudger is entitled to the rights of a freeholder, so ought he who is eldest heir-portioner, the lands continuing undivided; especially considering he is infest base in the property, on a disposition from his uncle, and has it in his power to make his infestment public; so that he has right really to the whole estate.

THE LORDS sustained the objection.

Act. Jo. Stuart.

Alt. R. Dundas.

D. Falconer, v. 1. No. 207. p. 286.