

No 15. this; for, whereas formerly, when the extent of lands did not appear, the heritor was entitled to claim a vote, if he had L. 400 of valued rent; from which it was doubted if he could vote upon his valuation, when the extent appeared and did not amount to 40s. this was amended, and the valuation in all cases made a sufficient qualification.

The defender's retour would, according to the act 1681, have sufficiently instructed his extent, as it was retoured distinct from the feu-duty; the ordinary stile of those which the act intended to exclude being, *Et quod præfata terræ nunc valent per annum feudifirmas et devorias subterscript. et tempore pacis tantum valuerunt.*

THE LORDS refused the petition, and adhered.

Reporter, *Balmerino.* Act. *H. Home, Ferguson, & Ramsay.* Alt. *Graham sen.*  
*Lockhart, & Philp.* Clerk, *Murray.*

*Fol. Dic. v. 3. p. 405. D. Falconer, v. 1. No 115. p. 138.*

1747. June 24.

FREEHOLDERS of Perthshire *against* M'ARA.

No 16.

The objection sustained, that the old extent was retoured to the same sum with the feu-duty, though there was a retour of the old extent separate from the *reddendo.*

IN the case of the Freeholders of Dumfries-shire against Irving of Wysby, the LORDS sustained the objection to a retour, that it was of feu-lands, and the old and new extent and the feu-duty retoured to be all the same; in respect of the clause in the act of Parliament 1681, which requires the old extent in retours of feu-lands to be distinct from the feu-duty; and gave the like judgment in June 1746, Freeholders of Linlithgowshire against Cleland of Kincavel, No. 15. p. 8574. The like question now again occurred, Freeholders of Perthshire against M'ARA of Drummie, and the like judgment was given.

The Lords understood this clause in the act as a declaration of the Legislature, that where the old extent in the retour and the feu-duty was the same, the old extent was no other than a random answer by the Jury to that head of the brieve, as often the answer to that head of the brieve appears to be by retouring the feu-duty, tax-ward, or blench-duty, as the old extent.

This clause in the act of Parliament has ever been thought dark; but the meaning of it was by some of the Lords thought to be, not that the feu-duty and the retour-duty should be different sums, as there was nothing to hinder the feu-duty and old retour-duty to coincide in the sum, but this, that, beside the *reddendo* of the feu-duty, there should be a separate retour of the old extent, and that, wherever there was such separate retour, it was a good retour, notwithstanding the feu-duty and retour-duty were the same.

But the Court was, as has been said, of a different opinion. Withal, as the judgments in the two former cases had settled this point in the shires of Dumfries

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

No 16.

*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

No 17.

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.