

always collected the Cess and paid in the Cess of the whole tenement together to him, and every farm was still liable for the Cess of the whole tenement, which could not be if that was a division;—that the Minister's stipend is often collected and paid in the same way, yet the whole tenement is still liable to the Minister.—10th January 1753, In the same complaint, Archibald Campbell, writer to the signet, complained of being refused to be admitted. He had purchased a wadset belonging to the deceased Captain Campbell, and which he had got in 1735 from Stirling of Herbertshire, partly of property lands, partly of a superiority valued L.410; and against him it was objected that a superiority could not be wadset; 2dly, That this was no superiority, for that Herbertshire had acquired to himself a claim to his vassal's property which he reserved in the wadset right, and power to feu it again, to be held of Captain Campbell; 3dly, That it was improper in so far as the reverser was bound to relieve the wadsetter of public burdens, at least of augmentations of stipends; and that if any casualties of superiority should fall, he should submit what further sum should be paid for them and pay it or allow it at redemption, which was suspended for 21 years. But the Court repelled all these objections and found it a proper wadset. It was also objected, that the valuation of the property lands was divided only by a private meeting of two Commissioners; but as that division had been afterwards approved by a general meeting, they also repelled that. The last objection was that he was not in possession of the superiority, for that Herbertshire conveyed these lands to Lady Forrester, and she to Forrester of Denovan, who is infeft under the Great Seal and in possession of the lands. This objection was superseded till the fact should be cleared; and on reclaiming bill and answers, and after mutual memorials on the fact as to possession, and after appeal entered by the respondents, and withdrawn on paying L.40 costs, we adhered, and repelled the objection to the possession and sustained the claim, 6th February.—Affirmed in Parliament.

Nos. 64. and 65. 1754, Jan. 15. GRANT *against* ABERNETHY—GORDON of Lessmore.

SIR ARCHIBALD GRANT complained that this meeting had enrolled Abernethy of Crimnoggat as apparent-heir though he lodged no claim for being enrolled with the Sheriff-clerk as the act 16th Geo. II. directs. Mr Craigie for the respondent gave up the point; yet two of the Judges seemed disposed to dismiss the claim; but the rest of the Court were unanimous, and without a vote or almost any argument ordered him to be expunged.

He also complained of Sir Alexander Gordon of Lessmore being enrolled notwithstanding that in his claim that he lodged the valuation of his land was left blank contrary to the statute. This complaint we also sustained without a vote, and ordered him to be expunged.

No. 66. 1754, Jan. 18. FORDYCE of Gask, *Supplicant*.

FORDYCE of Gask complained of being refused to be put on the roll at Michaelmas, though he produced a retour of his lands of Gask as old as 1513 proving the old extent

to be 10 merks. Answered, That complaint having been made, pursuant to the act 16th Geo. II. of his being on the roll, though he had no sufficient qualification either in valuation or old extent, which was served on him, and he having neglected to put in answers or produce his titles, we ordered him to be expunged in February 1745, therefore the freeholders could not enrol him while that decret stood, which can only be set aside by reduction. This defence or objection we unanimously repelled, for we thought a reduction would have been very improper and no cause for it, and that he had no other way to be enrolled than by new application to a Michaelmas meeting, as these Gentlemen whom we expunged for not lodging their claim or not specifying their valuation had not nor cannot reduce that decret, but may apply again to the freeholders. However I might except Kames for he differed from us. Then they objected that the retour bore that the lands with an annuity out of other lands *valuerunt tempore pacis* 10 merks, and that he has no right to that annuity, and the old extent cannot now since the act 16th Geo. II. be divided. Answered, The annuity was only 13s. 4d., which never could be extended higher than that *valet seipsum*, and therefore the lands were 9 merks of old extent, and that the retour was itself a sufficient division of the extent, because it proved that one of the two subjects could not exceed 13s. 4d. Replied, The retour has made no division though it might be a rule or meith for our dividing, but we cannot now make any division, and if there were a retour of so many annuities out of different estates as should in whole amount to L.20 or 100 merks of old extent, and if one should purchase an exact tenth part of these annuities, which with the greatest certainty would be a tenth part of the old extent, that is 40 shillings or 10 merks, yet it would not entitle to a vote; and if two heirs-portioners should succeed to an estate of L.10 or L.20 old extent, yet none of them would have a vote because the old extent cannot now be divided. The complainer quoted precedents from the retour of Lennox, where particular tenements were in the descriptive clause called L.4 or L.5 lands, and in the *valen.* added them all together, yet we sustained it as so many several valuations or old extents. On the question it carried to sustain the complaint. *Pro* were Drummore, Justice-Clerk, and Shewalton, and Minto in the chair. *Con.* were Kames, Woodhall, and I. *Non liquet* were Strichen and Kilkerran. Thereafter the respondents offered to prove, that part of the lands of Gask contained in the retour 1513 were since that time annalized and dismembered. We ordered them to give in a condescendence, which they did, but altogether general, that Lord Braco, Hatton, or other Gentlemen in the county were possessed of them, without saying what were the lands dismembered, that we could not give any proof, and therefore we refused to allow any proof, 19th January. 26th June, We altered and dismissed the complaint, though I had altered my opinion, and nothing new in the cause. *Pro* were Kilkerran, Kames, Woodhall, Shewalton, and President. *Con.* were Milton, Minto, Drummore, and I. *Non liquet* Strichen, Justice-Clerk, Auchinleck.

No. 67. 1754, Feb. 6. CAMPBELL of Succoth *against* ———.

See end of Note of No. 61, &c.