

APPENDIX.

PART I.

MEMBER OF PARLIAMENT.

1775. July 13.

EDWARD MAXWELL, *against* JOHN BUSHBY.

AT the Michaelmas head court of the stewartry of Kirkcudbright, in 1774, Mr. Maxwell claimed to be enrolled as a freeholder upon the forty-shilling land of Culgow, part of the barony of Larg; and for instructing the old extent, founded upon the retour of John Gordon of Lochinvar, dated 2d February 1630, in which the lands of Culgow are, in the descriptive clause of the retour, said to be a forty-shilling land; and, when the description of the several particular lands are added together, the sum total at which they are stated in the valent clause exceeded the sum total, as stated in the descriptive clause, in the sum of four pennies Scots. Upon this ground, an objection was stated to his enrolment, that the said retour did not prove the lands claimed upon to be a forty-shilling land of old extent; which the meeting having sustained, the question was brought, in the usual form, under the review of this Court.

Pleaded, in support of the objection: That the valent clause is the only part of the retour which can or ought to be relied upon in a question of this kind. Here, the old extent of these lands of Culgow is not specified in the valent clause; but the same, together with the whole other subjects composing the barony of Larg, are there retoured *in cumulo* at £11. 3s. 8d. of old extent, and £33. 10s. 0d. of new. It would seem, therefore, that, upon the footing of the valent clause in this retour, the old extent of the lands of Culgow cannot be ascertained, without making a division of the *cumulo* extent of the whole lands;

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Evidence of the old extent — Discrepancy in the descriptive and valent clauses of the retour.

See No. 26. p. 8596. and relative Synopsis, p. 983.

No. 1. a thing which is now expressly prohibited, by the statute of the 16th of his late Majesty.

Again, in this case the *cumulo* in the valent clause does not exactly agree with the particulars in the descriptive clause, the *cumulo* being four pennies more; and it is a mere conjecture that this difference has proceeded from an error in summation.

Lastly, the complainer's argument, in the present case, is still liable to another capital objection, namely, that the burgh of barony of Monygaff, with the fairs, markets, customs, &c. thereto belonging, and also the town and foralice of Larg, with the gardens, orchyards, mills, mill-lands, multures, fishings, &c. all making parts of the barony of Larg, are specified in the descriptive clause, over and above the particular tenements described as shilling or merk lands, and without any sums of shillings or merks being prefixed to them; and yet, in the valent clause, the whole of these subjects, including the burgh, &c. are retoured, as valued at £33. 10s. 0d. of new, and at £11. 3s. 8d. of old extent. The words are, 'Et quod eadem terrae *aliaque suprascript. cum pertinentiis nunc per annum valent,*' &c.

Argued for the complainer: It is perfectly clear that, when lands contained in a retour are valued *in cumulo* in the valent clause, but having their separate values expressed in the descriptive clause, and the total do agree, that such retour is proper and legal evidence of the old extent of the particular tenements, though stated under one *cumulo* in the valent clause; for, when the sums in the descriptive clause are checked by the valent clause, it must afford sufficient evidence to the Court, that the descriptive clause contains a just account of the old extent of the particular tenements; and, as this evidence arises from a retour prior to the 1681, so, upon a sound construction of the statute of the 16th of his late Majesty, the old extent of the lands must be held as legally instructed; and so it was expressly found, 18th January 1745, upon a complaint against some freeholders of the shire of Renfrew, claiming votes in the election of a member of Parliament, 'That a retour of several lands valued together, mentioning the several values in the descriptive clause, and only the sum total in the valent, which sum agreed with the particulars in the description, was sufficient evidence of the value of these particular lands,' No. 10. p. 8571.

Nor can the small discrepancy of four pennies Scots, in which the valent clause exceeds the particulars in the descriptive, afford any solid objection in this case. The practice of the Court has always been to pay no regard to trivial errors which may have happened through the carelessness of a clerk in summing up particulars, even where it was of much greater consequence than the present.—In the case of Colquhoun of Luss, against the Freeholders of the shire of Dumbarton, decided 5th February 1745, the Court paid no regard to a difference of £1. 10s. 8d. in which the *cumulo* in the valent clause exceeded the sum total of the particulars in the descriptive clause, No. 12. p. 8572.

The objector's last argument is nothing else than a mere quibble. It resolves into this, that the Court are to presume without evidence, and, which is more, even contrary to evidence, that the burgh of barony of Monygaff, and the tower of Largs were extended, and were therefore entitled to some part of the *cumulo* in the valent clause, and which would have the effect to destroy the effect of the descriptive clause, as not corresponding with the valent. The complainer does deny, that either the burgh of barony of Monygaff, or the Tower of Largs were extended. There is no evidence they ever were, and, indeed, if the complainer is not much mistaken, they were not the subject of the old extent; and, it is believed, the respondent will find himself diffculted to point out an instance of the contrary.

The Lords 'repelled the objection.'

Act. *Crosbie, Macqueen.*

Alt. *Rae.*

Clérk, *Kirkpatrick.*

W. W.

Fac. Coll. No. 181. p. 100.

1776. *March 7.*

JOHN HENDERSON, Younger of Fordell, Esq. and others Freeholders in the County of Fife, *against* CAPTAIN HUGH DALRYMPLE of FORDELL.

AT Michalemass 1767, a claim was entered in the name of Captain Hugh Dalrymple of Fordell, to be enrolled as a Freeholder in the county of Fife. In support of his claim he produced a charter under the great seal in his favour, bearing date 3d July 1766, and infeftment following thereon, together with a certificate that the lands were valued in the Cess Books at £888 Scots. To this claim it was objected, that nothing was produced to show that Captain Dalrymple was a proper wadsetter, and that he could not therefore be admitted upon the roll. This objection was sustained, and Captain Dalrymple chose for the time to acquiesce in the judgment.

At the election of a representative for the county of Fife, he again put in his claim, and besides his charter and sasine, produced the disposition upon which the charter proceeded, to prove that he was a proper wadsetter. The conveyance bore as follows: 'I James Wemyss, of Wemyss, Esq. superior of the lands and others underwritten, Whereas Hugh Dalrymple of Fordell, Esquire, has made payment to me of the sum of £20 Sterling, for my granting these presents, whereof I hereby grant the receipt, renouncing all exceptions and objections in the contrary; therefore witt ye me to have sold, annalzed, and disposed, as I by these presents sell, annalzie, and dispo, to and in favour of the said Hugh Dalrymple, his heirs and assignees heritably, but redeemable always and under reversion in manner after-mentioned, all and hail the lands of Powguild, and Glennigston, &c. providing always, as it is hereby expressly

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No. 2.

What to be accounted such a wadset as to entitle to a vote? Sale *sub facto de retrovendo.*