1760 *February* 5. CAMPBELL and GRAHAM *against* MUIR.

No 191.

THE Earl of Glencairn conveyed the superiority of certain lands to Boyd Porterfield of that Ilk, the vassal, who disponed it partly to Daniel Campbell of Shawfield, and partly to William Graham younger of Gartmore in liferent, and to the Earl in fee. *Objected*, That as the charter from the Crown to Mr Porterfield contained one joint *reddendo* for the whole lands, it was not in his power to separate them without the consent of the Crown. *Answered*, The precept bears to assignees, which implies consent to dispone the lands in whole or in part; at any rate, the superior cannot be prejudiced by the division, the whole lands, and every part thereof, being liable for the *reddendo*. THE LORDS repelled the objection, and ordained the claimants to be added to the roll.

Fol. Dic. v. 3. *p.* 426.

*** This case is No. 8. p. 7783. *voce* JUS TERTII.

1761. *July* 28. STEWART *against* DALRYMPLE.

No 192.

ALEXANDER Earl of Galloway, in the view of creating certain freehold qualifications, granted a feu-charter of certain lands to Lord Garlies, his son, and afterwards obtained a charter from the Crown upon his own resignation, and conveyed parcels of the superiority to Mr Walter Stewart and others, his friends. The freeholders, on different grounds, refused to enrol; and complaints being presented, it was pleaded for them, *inter alia*, That the dispositions to the claimants were null, as granted without the consent of Lord Garlies the vassal, which was necessary before the superiority could be divided. *Answered*, That as the vassal may sell part of the lands without the consent of the superior, so, in like manner, may the superior sell a part of his superiority without consulting the vassal. But here there was no division of the superiority of any one fee, but a distribution of the superiorities of several distinct fees, distinguished into several parcels, each parcel consisting of so many pounds and merk lands; and that at any rate the objection was *jus tertii* to the freeholders, as the vassal did not object. THE LORDS repelled the objection.

Fol. Dic. v. 3. *p.* 427.

*** This case is No. 18. p. 8579.

1780. *March.* FERGUSON *against* MONTGOMERY.

No 193.

SIR JOHN ANSTRUTHER held the lordship of Giffen blanch of the Earl of Eglinton, for payment of one penny Scots, *si petatur tantum*. The Earl split this superiority into different parts, for creating qualifications. *Objected* to the

claimants on these qualifications, That as Sir John Anstruther, the vassal, paid only one penny Scots, *si petatur*, for the whole lordship, so that blench duty neither was divided, not was divisible; and as each claimant had only an undivided share, it was an established maxim, that no person could be qualified to vote as a freeholder, without having a distinct property, and a distinct possession. THE LORDS sustained the objection.—*See* APPENDIX. No 193.

Fol. Dic. v. 3. *p.* 428.

1781. *January* 23. JAMES FERRIER *against* The Hon. HENRY ERSKINE.

No 194.
Found in conformity with Ferguson against Montgomery, *supra*, but reversed upon appeal.

THE barony of Drumry, in the county of Dumbarton, is held blench by the Earl of Crawfurd, off Lord Graham, eldest son of the Duke of Montrose, for payment of eight pennies Scots, or a pair of spurs.

The superiority of the forty-shilling land of Cloverhill, part of that barony, was conveyed by Lord Graham to Mr Erskine, with an assignation to the rents and casualties, and with powers to Mr Erskine to enter and receive vassals, &c. Upon these lands Mr Erskine was enrolled as a freeholder in the county of Dumbarton.

In a complaint against this enrolment, in the name of Mr Ferrier, it was *maintained*, That the blench duties, payable by Lord Crawford the vassal, for the whole barony, were not divided; and that Mr Erskine, therefore, had not a separate possession of the lands upon which he was enrolled.

Answered for Mr Erskine, In blench holdings, the duty, payable by the vassal, is merely an acknowledgement. As this acknowledgment is incapable of division, when a partition of the superiority takes place, the vassal must perform it to each superior. The vassal may object to the multiplication of superiors; but it is *jus tertii* to the freeholders.

Observed on the Bench, The superiority of a tenement holding blench cannot be divided. A blast of a horn, a rose, a pair of spurs, cannot be delivered in parts. When a part of a superiority of this nature is disponed, no possession can be attained on it. A qualification founded thereon is purely nominal and fictitious; and Mr Erskine's enrolment, on this account, was unwarrantable.

" THE LORDS found, that the freeholders did wrong in admitting Mr Erskine to the roll," &c.

For Mr Erskine, *David Græme.* Alt. *Craig.*

Fol. Dic. v. 3. *p.* 428. *Fac. Col. No* 21. *p.* 42.

*** This case was appealed.

The HOUSE of LORDS, 17th April 1782, " ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutor complained of reversed; and it is declared, that the appellant was entitled, in virtue of his titles, to be enrolled on the roll of freeholders for the county of Dumbarton."