same, the vassal of the Crown, according to that argument, however great his valued rent might be, could not have voted; which seems equally contrary to constitutional principles, and to the terms of the statute 1681. In such a case, then, the vassal had a right to vote on the valuation of his lands; and, in like manner, if the rent had come to exceed the amount of the feu-duties, this claim would have extended to the total valuation. No 48.

Nor does a superior's qualification depend on the mode of paying the cess. This may be paid by a subvassal or by a tenant, as well as by the Crown's assignee. But it is the land that is ultimately liable for the public burdens; and, indeed, by the strict letter of the statute 1681, the right of voting is attached to the Crown-vassal infeft in the lands so liable.

The case of Campbell that has been quoted may show, indeed, that a grantee of feu-duties, not being himself the Crown-vassal, is not entitled to vote on them; but the present question respects the vassal who pays, and not the grantee who receives, the feu-duties.

The Court repelled the objection.

IN the same complaint, the following objection was likewise stated. Certain lands, that at the time of the general valuation had been valued *in cumulo* with other lands not belonging to Mr Trail, also composed part of his qualification. In a process of division of this *cumulo* valuation, the Commissioners of Supply had pronounced a decree, ratifying the proportional valuation of these lands at L. 60. But it was

Objected, That the proceedings of the Commissioners, previous to their decree, were so irregular and defective, that it ought to be considered as null and void.

Answered, The decree itself being, *ex facie*, formal and unexceptionable, must be held to be good, until it be set aside by a process of reduction.

THE LORDS repelled the objection.

Act. *Wight, et alii.* Alt. *Rolland, et alii.*

S. *Fol. Dic. v.* 3. *p.* 407. *Fac. Col. No.* 166. *p.* 336.

1796. *March* 2. OGILVY *against* CARNEGIE.

No 49

SIR JOHN OGILVY claimed to be enrolled on the lands of Baldovan, with the Bank of Baldovan, which he stated as being valued at L. 386: 5: 8. In the valuation-book 1683, there is this entry: "Baldovan L. 550." After this period, a part of the lands had been sold; and, in subsequent cess-books, particularly from 1760 downwards, there is a separate entry: "For Baldovan "L. 386: 5: 8;" which, it was contended, could only apply to the original

No 49. article *minus* the part sold. No evidence of a regular division was produced; but the entries in the cess-books, joined to the title-deeds, and a series of receipts, proving the cess to have been uniformly paid, corresponding to the valuation of L. 386 : 5 : 8, were urged as sufficient presumptive evidence that there had been a division; and the Court sustained the claim.—*See* APPENDIX.

Fol. Dic. v. 3. *p.* 407.

SECT. III.

By what rule are *cumulo* Valuations to be divided.

1753. *July* 20. INNES of Sandside *against* SUTHERLAND of Swinzie.

No 50.
Instance of splitting a valuation of lands valued *in cumulo*.

IN the year 1701, by authority of Parliament, there was a valuation of the shire of Caithness. The lands of Reisgill and Berrydale, both belonging to Sutherland of Langwell, were valued *in cumulo* at L. 800 Scots; and, by authentic documents, preserved, it appears that, at this period, the lands of Reisgill were of yearly rent L. 772 Scots, and of Berrydale, L. 704 Scots. Recently after this period, the lands of Reisgill and Berrydale were separated, and the disponees were entered into the cess books of the shire, by what authority is not known, as liable for cess each of them, at the rate of L. 400 valuation; and the use of payment, conformable to this valuation, was continued for 40 years by the proprietor of Reisgill, as well as by the proprietor of Berrydale. In the year 1751, Sutherland of Swinzie, proprietor of Reisgill, finding no decree of the Commissioners of Supply, authorising a division of the original valuation, was advised, in order to remove all objections, to apply to the Commissioners for a division. The Commissioners took under consideration, not only the old rent, as vouched by rentals, but also the present rent of both estates, and pronounced a decree agreeable to the division made in the cess books, and to the use of payment; and, upon the authority of this decree, he was enrolled.

Innes of Sandside, one of the freeholders, complained to the Court of Session, and holding the present rent to be the rule of division, charged the Commissioners with partiality and iniquity; condescending upon many particulars, where the rent of Berrydale was kept down, and the rent of Reisgill raised