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FORBES.

SCOTLAND.

(COURT OF FREEHOLDERS AND OF SESSION.)

JAMES GIBSON, ESQ. of Ingliston - *Appellant.*

SIR WILLIAM FORBES, of Pitsligo, bart. - - - - - - - - - *Respondent.*

The Scotch statute 1681, c. 21, directing that a roll of freeholders shall be made up according as the same shall be instructed to be, of the holding, extent and valuation in the act specified; and providing that the freeholders shall meet to revise the roll for election, &c. and giving jurisdiction to the Court of Session to determine objections against "any insertion in the roll;" Held in the Court of Freeholders and the Court of Session, and on appeal, that the freeholders have no authority, as to the holding, (although they may as to the extent and valuation,) to look beyond the titles produced to them by the claimant, or to receive evidence from the production of anterior titles, or otherwise, to show that the holding is different from that which is expressed in the *tenendas* clause of the charter, as that it is burgage where it purports to be blench-farm.

BY an Act of the Parliament of Scotland, passed in 1681, (c. 21,) reciting that great delay in the despatch of public affairs in Parliament, and Conventions of Estates, was occasioned by the controverted elections of Commissioners of Shires, provides that none shall vote in the election of commissioners of shires or stewartries, which have been in use to be represented in Parliaments and Conventions, but those who at that time shall be publicly infeft in property, or superiority in possession, of a forty-shilling land of old extent, holden of the King or Prince, distinct from the feu-duties in feu-

lands, or where the said old extent appears not, shall be infeft in lands liable in public burdens for his Majesty's supplies for 400 *l.* of valued rent, whether Kirk Lands, now holden of the King, or other lands holding feu, waird, or blench, of his Majesty, as king or prince of Scotland. The act directs that "a roll of freeholders shall be made up according as the same shall be instructed to be of the holding and extent or valuation aforesaid;" and provides, "that the freeholders shall meet at the "head boroughs of the shires, &c. at the Michaelmas "head court yearly; and shall revise the roll for "election, and make such alterations therein as have "occurred since the last meeting." Minute directions are then given as to the mode of proceeding, and the forms requisite in taking objections.

By another clause jurisdiction is given to the Court of Session. "In case objections be made (against "any insert in the said roll) where a Parliament or "Convention is not called a particular diet, shall be "appointed by the meeting, and intimate to the parties controverting to attend the Lords of Session "for their determination, who shall determine the "same at the said diet summarily, according to law, "upon supplication, without further citation." *

* By the Act 1427, c. 101, the Commissioners are to be elected by the "free tenauntes,"—"them, that awe compearance in Parliament and Councel," out of whose "rentes" the expense of the Commissioner was, to be provided by contribution.

The Act 1457, c. 75, provides that "na freeholder that holdis "of the king under the sum of twenty pounds be constrained to "cum to the Parliament or General Councel as for presence, but "gif he be ane barronne, or els be specially warned," &c.

The Act 1503, c. 7, is to the same effect.

The Act 1587, c. 114, referring to the Act 1427, as to the election of Commissioners, provides that "Name have voit in

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At the Michaelmas head court, held in October 1816, the Respondent gave in a claim to be enrolled as a freeholder of the county of Edinburgh.

" their election bot sic as hes forty shilling land in free tennendcy " holden of the king," &c.; and that " All freeholders be taxed " for the expenses of the Commissioners of the shires passing to " Parliament or General Councels, and letters of poynding or " horning to be direct for payment of the summes taxt to that " effect," &c.

The act 1661, cap. 35, reciting " That diverse debates have " formerly occurred, concerning the persons who ought and " should have vote in the election of commissioners, from the " several shires of this kingdom, to Parliament, and who are " capable to be commissioners to Parliament, and that it is ne- " cessary for the good of his service that the same be cleared " for the future (the King) doth, therefore, with advice and con- " sent of his estates of Parliament, statute, enact, and declare, " that beside all heritors who hold a fourty shillings land, of the " King's majesty *in capite*, that also all heritors, liferenters, and " wodsetters holding of the King, and others who held their lands " formerly of the bishops or abbots, and now hold of the King, " and whose yearly rent doth amount to ten chalders of victual, " or one thousand pounds (all feu duties being deducted) shall be, " and are, capable to vote in the election of commissioners of " Parliaments, and to be elected commissioners to Parliaments; " excepting always from this act all noblemen and their vassals. " And it being just that those who shall be chosen, and accord- " ingly shall attend his majesty's and the kingdom's service in " Parliament, have allowance for their charges, his majestie " doth therefore, with advice aforesaid, modify and appoint five " pounds Scots of daily allowance to every commissioner from " any shire, including the first and last days of Parliament, toge- " ther with eight days for their coming, and as much for their " return, from the farthest shores of Caithness and Sutherland, " and proportionably at nearer distances; and that the whole " freeholders, heritors, and liferenters holding of the King and " prince, shall, according to the proportion of their lands and " rents, lying within the shire, be lyable and obliged in the pay- " ment of the said allowance, excepting noblemen and their " vassals." The act then concludes with a provision for defraying certain extraordinary expences which some commissioners of shires had then incurred, " in providing of foot mantles for the " riding of the Parliament."—It was argued on the part of the Respondent that the phraseology of these statutes refers to the present investiture of the estate; and that whatever their ultimate right might be, those " who hold" of the King for the time

In support of the claim of enrolment there was produced a charter of resignation under the great seal, dated at Edinburgh, 20th December, 1814, containing a grant by way of disposition and assignation from the magistrates and town-council at Edinburgh to the appellant, his heirs and assignees, of the superiority of certain lands described in the following terms:—"Totas et integras illas partes et portiones postea descript. terrarum vulgo vocat. "the Burrowmuir, alias the common muir, ad civi- "tatem Edinburgensem pertinen. viz. totam et in- "tegram villam et terras de Greenhill uti eædem "per demortuum Adamum Fairholm et ejus tenentes "possessæ fuerunt, novemdecem acrarum plenæ "mensuræ aut eo circa consisten. cum graminosis "pratis infra medium dict. acrarum per demortuum "Adamum Garden a diversis personis acquisit. et "omnes per maceriam lapideam nunc inclusas parva "parte ex australi orien. ejusdem jacen. excepta: "Ac etiam totam et integram illam parvam partem "dict. terrarum extra dict. maceriam cum fabrica "ferrea super eandem posita, jacen. ex occidentali "parte viæ publicæ ad locum vulgo vocat. Braids- "burn conducentis: Ac etiam maneriei locum cum "domibus, ædificiis, hortis, pomariis, columbariis, "et omnibus et singulis pertinentiis prædict. terra- "rum, &c. *jacen. infra parochiam de St. Cuthberts* "*et vicecomitatum de Edinburgh.*"

The *quæquidem* clause describes the lands in question as formerly held of the Crown by and for the use of the town of Edinburgh.

being could not refuse to sustain their share of the burden imposed for defraying the expenses of the commissioner.

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The *tenendas* is in these terms: " Tenend. et " habend. dictas terras aliaque cum pertinen. supra " script. *per dict. Dominum Gulielmum Forbes ejus-* " *que prædict.* DE NOBIS *nostrisque regiis successori-* " *bus immediatis legitimis superioribus earundem ut* " *sequitur :* viz. prædict. partes et portiones lie the " Burrow Muir, seu Common Muir, vocat. Green- " hill, cum pertinentiis *in libera alba firma, &c.*

The *reddendo* for the lands of Greenhill is, " Summam *unius denarii monetæ* Scotiæ super fun- " dum dict. terrarum de Greenhill apud terminum " Pentecostes annuatim *nomine albæ firmæ*, si petatur " tantum, cum talibus ulterioribus seu alteris divoriis " (si tales sint) in cartis in favorem Præpositi, Ma- " gistratuum et Communitatis civitatis Edinburgensis " content."

An instrument of sasine upon this charter, dated 2d March, 1815, was also produced; and it was shown, That the lands exceeded the sum of 400 *l.* Scots; and for proof thereof the claimant referred to the valuation and cess-books of the county of Edinburgh, and to other competent evidence to be produced to the freeholders. The claim then concludes, " that the said Sir William Forbes " being thus publicly infeft in lands holden immediately of the Crown, and of the valuation required by law, is entitled to be enrolled in the foresaid roll of freeholders of the county of Edinburgh, and hereby claims to be enrolled accordingly.

To the enrolling of the claimant it was objected by Mr. Gibson, of Ingliston (the Appellant) that the lands of Greenhill, composing a large proportion of the lands on which the claim is founded,

and described in the claimant's titles as all and whole, those parts and portions of the lands commonly called the Boroughmuir, alias the Common Muir, belonging to the City of Edinburgh, viz. the town and lands of Greenhill, &c., manor-places, houses, &c., lying within the parish of St. Cuthbert's and sheriffdom of Edinburgh, have always held burgage.

That, as parts and portions of the common muir, they are contained in the charters of the town of Edinburgh from the most remote periods; and according to the charter o confirmation and novadamus in the town's favour, dated 23d October 1636, which was proposed to the barons as the last investiture of these lands in favour of the resigners, and by which the claimant's signature was revised, they are held, along with the rest of the burgh, of the king, "in libera hæreditate et *libero* "*burgagio* in perpetuum;" with a *reddendo* of 52 merks sterling "tanquam pro antiquo *censu* "*burgali* content. in dicto infeoffamento dicti burgi "concesso per regem Robertum primum ad duos "anni terminos, &c. *cum servitio burgi solet. et* "*consuet**."

To which it was answered for the Respondent that the charter 1636 did not instruct the borough or common muir of Edinburgh to be of burgage-tenure; that it was a general charter, confirming all the old grants in favour of the city, and some of the lands were no doubt burgage, but a much more considerable part of the subjects in that

* The record of this charter, in the register of the great seal, was laid before the freeholders.

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charter, and the boroughmuir among the rest, are held blench or feu of the Crown; and the lands of Greenhill, in right of which Sir William Forbes claims, have stood separately rated in the valuation-books of the county as far back as any record reaches; and it is proved by the valuation-book that since 1726 Greenhill has paid cess and other county-taxes according to that valuation; while the subaltern rights of property have been uniformly made up after the form of a feu-holding, and the infeftments have been recorded in the county register.

These facts, as the Respondent contended, disproved the allegation that Greenhill was of burgage-tenure; but that it was sufficient to support the enrolment that Sir William Forbes produced a Crown-charter and infeftment in his favour, which were *ex facie* unobjectionable. Under these circumstances it was contended that it was incompetent for the freeholders to entertain any objection which required recourse to the warrants of the charter, and to the other old titles.

Questions were then put by the Appellant to the agent for Sir William Forbes:

"1st, Whether the Crown-charter of 23d October 1636, in favour of the town of Edinburgh, is "not the charter on which the claimant's signature "(the warrant of his charter) was revised by the "Barons of Exchequer.

"2d, Whether the copy of the brief now produced is not a copy of the brief laid before the "Barons by the claimant at revising the signature.

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The agent considering it to be irregular to put these questions to him declined answering them.

"The meeting having considered the claim, productions, objections, answers and questions, sustained the claim, and enrolled the claimant accordingly."

The objection against the Respondent's enrolment having been overruled in the court of freeholders without a division, the Appellant presented a petition and complaint to the second division of the Court of Session, under the authority of the statute 16th Geo. II.* praying the court to find that the freeholders of the county of Edinburgh did wrong in enrolling the Respondent, and therefore to ordain his name to be expunged from the roll.

In this petition and complaint the Appellant contended that the lands of Greenhill belonged to the community of the city of Edinburgh and were holden by that community inalienably in free burgage; that consequently these lands were not truly holden by the Respondent in feu, ward, or blench, of his Majesty, in terms of the statute 1681, cap. 21., regulating the election of commissioners for shires; and that the community of the city of Edinburgh could not "by any species of juggle, either legal or poli-"tical," be permitted to throw its burgage-property into the mass of property holding in feu, ward, or blench, of his Majesty, and thereby extend the territorial basis of county representation, to the injury of the proper freeholders in their constitutional rights. To establish the proposition as to the tenure of the lands in question the Appellant referred to the terms of the Crown-charter, produced and founded

* c. 11.

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on by the Respondent at the meetings of freeholders; but endeavoured to show, by a deduction from the older title-deeds, that the lands in question had previously been held burgage, and were consequently incapable of constituting the basis of a freehold qualification in the county of Edinburgh.

In his answers to the petition and complaint, the Respondent contended that the earlier titles gave no support to the Appellant's objection. That a burgh might, and often did, hold subjects of the Crown in feu-farm or blench-farm, as well as in burgage; and the Respondent referred to the charter granted by king James VI. to the city of Edinburgh, on the 16th of March, 1603, called by way of pre-eminence the "Golden Charter," as well as to the later charter of Charles I. in 1636, to show that there was no reason to presume that the lands in question had ever been held burgage. He referred also to the evidence derived from the county cess-books, and contended, that if the lands in question had been held burgage, it was to be presumed that they would have been liable for town-taxes, and would have been entered in the cess-books of the burgh. For the same reason they would not have appeared in the cess-books of the county. It being admitted, however, that the lands claimed on by the Respondent had at no time been entered in the burgh cess-books, but on the contrary had constantly stood on those of the county, and paid cess to the county-collector, they ought to be represented in the county, of which they had always been considered as a part. But the Respondent rested his answer to the complaint mainly upon the ground, that having produced all the evidence

which the law holds to be necessary to establish a claim of enrolment, neither the freeholders, nor the Court of Session, sitting as a court of review on a matter brought before them, by a summary petition and complaint under the statute, could entertain ny objections attempted to be supported by an investigation of the older titles.

These pleadings having been followed by replies and duplies, and the Court being of opinion that the Appellant's complaint was incompetent, without giving any opinion on the truth or relevancy of the Appellant's allegations on the import of the older titles, pronounced the following interlocutor: "The "Lords having considered this petition and com- "plaint, with the answers, replies, and duplies, and "writs produced, and heard the counsel for the par- "ties *viva voce*, find the said complaint not compe- "tent, and dismiss the same: find no expenses due, "and decern."

Against this interlocutor the Appellant presented a short petition, and afterwards, with the leave of the Court, an additional petition, in which he endeavoured to remove the objection of incompetency, by contending that there was a distinction between questions regarding the right to the estate claimed upon, and questions regarding the nature and quality of the estate itself. In the one case, if the investiture is free from any *ex facie* defect, it is *jus tertii* to the court of freeholders, whether the estate on which the claim is framed may not be ultimately declared in a court of law not to belong to the claimant. If the titles exhibited by the claimant labour under no palpable objection, the freeholders are bound to admit him to the roll, without regard

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to any right of challenge which may be supposed to exist in favour of any third party. But where the objection arises not upon any ground o competition between different individuals, but upon a defect in the quality of the estate itself, every freeholder has an interest to insist upon such an objection, inasmuch as every fictitious addition to the general mass of freehold property is a virtual subtraction from the value of what is real freehold, and a consequent diminution of the constitutional rights of freeholders. The Appellant contended that the difference of interest in the two classes of objections was sufficient to establish a distinction between them; and he endeavoured to show, as well by a reference to the election statutes as by a review of the different decisions relative to the competency of objections to claims of enrolment, that there was neither reason nor authority for holding his complaint as incompetent.

In his answers to those petitions the Respondent contended that there was no room for the distinction stated by the Appellant. From a review of the statutes passed for the purpose of regulating the proceedings at meetings of freeholders, he contended that the freeholders were bound to give effect to the existing investiture in all its parts; and that they were no more entitled to proceed upon the supposition that the tenure ought to have been different from that which the investiture bore, than to contend that the investiture ought to have been in favour of another party than the claimant. He contended, that from the whole constitution and powers of the freeholders, as fixed by these statutes, they were as little qualified to investigate matters of tenure as to

investigate any other matter of title beyond what appeared *ex facie* of the charter and infeftment produced. Nor was there any room for the distinction founded on the supposition that the freeholders had an interest in the one case which they had not in the other. If the interest of the freeholders to limit the numbers on the roll were held sufficient to authorize their interference, it would manifestly entitle them to investigate all objections tending to show that notwithstanding the subsisting investiture the ultimate right to the estate might be in another person than the claimant. That other person might perhaps be a nobleman, an unmarried woman, or otherwise disqualified from exercising the elective franchise. The Respondent further contended, from a review of the decisions relative to objections against claims of enrolment, that where the charter and sasine produced were *ex facie* liable to no objection, the court had in no instance sustained objections founded on the anterior titles.

Upon consideration of these petitions, with the answers thereto, the Court, on the 16th December 1817, pronounced an interlocutor, refusing both petitions, and adhering to the interlocutor complained of.

Against the interlocutors of the Court of Session, dated 17th May and 16th December 1817, the Appellant entered an appeal.

For the Appellant: *

The feudal right, resigned by the magistrates of Edinburgh into the hands of the Barons of the Ex-

* The argument upon the appeal was in substance the same as in the pleadings in the Court below.

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chequer, as the King's Commissioners, for the purpose of new infeftment in favour of the Respondent, was the right holden by the resigners in free burgage, subject to the ancient burgal-census services and prestations. The acceptance of a resignation which implied or expressed a change of feudal tenure, or the *reddendo* due to the Crown was illegal and void.

By the statute 1681, c. 21, the freeholders at their head court are to make up, and to revise and alter, the roll for election, "according as "the estate forming the ground of claim shall be "instructed to be of the *holding*, extent, and va-"luation," required by the act. The Court, therefore, of Freeholders originally, and the Court of Session, by way of appeal, have express authority under the acts * to investigate and ascertain the holding or tenure of the lands in respect of which a freeholder claims to be enrolled; and if it be admitted, that where it appears possible or probable that an opposite claim may be made in respect of the same estate, there is no jurisdiction to inquire where the title is clear on the face of the deeds produced; yet the objection in this case does not proceed on a preferable right in a third party, but upon the allegation that the freehold on which the Respondent claims to be enrolled is non-existent; that his estate lies not in the county but in the borough of Edinburgh. This is a clear ground of distinction, and the authorities show that it is well founded.

But supposing that the freeholders have no authority to inquire as to the tenure, if the title-deeds (however falsely) allege or import a sufficient freehold, yet the real nature of the tenure by which

* 1681, c. 21, and 16 Geo. 2, c. 11.

the Respondent holds the estate in question is apparent on the face of the title-deeds produced by him; and the freeholders ought either to have rejected his claim, or required further evidence of his title.

In the charter, the lands are described as "portions of the lands called the Common Muir, belonging to the city of Edinburgh." They are declared to have belonged previously to the corporation, for the use of the community of the city, and to have been disponed and resigned by the provost and magistrates; and the Respondent is thereby bound to pay a blench-duty of a Scots penny, "together with such further and other duties (if any such there be) as are contained in the charters in favour of the city of Edinburgh."

The presumption is that the lands were held by burgage-tenure; if they were held by any other tenure the Respondent is bound to show it. Collateral Crown-rents and profits of the burgh, to be holden in feu-farm for a fixed annual payment, have been superadded in the grant of some of the old charters, as in that of 1603. But the territory was always held in free burgage, as appears by the whole series of charters, and particularly by the charter of 1636, which is the subsisting and regulating investiture of the royal burgh of Edinburgh, and the immediate warrant of the Respondent's investiture.

For the Respondent:

The lands being expressly declared in the clause *tenendas* to be held by the Respondent blench of the Crown, the distinct and unequivocal terms of that clause cannot be affected by any expres-

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sions which may occur in other parts of the deed. The *tenendas*, as Mr. Erskine observes, is "that "clause in a charter which points out the superior "of whom the lands are to be holden, and the par- "ticular tenure under which they are to be enjoyed, "whether by blench-farm, feu-farm," &c. It is by that clause, therefore, that the proper tenure of the lands is regulated; and any expressions which may occur in any other parts of the charter must either be interpreted in conformity with that clause, or be held to have crept into it by mistake. But the charter in truth contains no expression inconsistent with the explicit terms of the *tenendas*. It no where describes these lands as lying within the city of Edinburgh, as having ever been liable in burgage-prestations, or as having ever been held by a burgage-tenure. It is no doubt true that the lands are described as having once belonged to the city of Edinburgh, and as having been part of the burrough-muir; but that circumstance by no means leads to the conclusion that the lands were held burgage. A burgh may hold lands of the Crown in feu-farm or blench-farm, as well as burgage; and it was accordingly admitted in the petition and complaint that many of the subjects contained in the charters in favour of the town of Edinburgh are held in blench-farm. The circumstance, therefore, of these lands which are situated within the county of Edinburgh having once belonged to the town, can afford no presumption that they are incapable of being held by the tenure so distinctly marked out in the *tenendas*.

Nor does such a presumption arise from the terms

of the *reddendo*, which stipulates for the sum of a penny Scots "*nomine albæ firmæ*, si petatur tantum "cum talibus ulterioribus seu alteris divoriis (si tales "sint) in cartis in favorem præpositi, magistratuum, "et communitatis civitatis Edinburgensis content." Had these other duties been described to be the *census burgalis*, with *burgh-service used and wont*, it might have been contended that there was some inconsistency between the *tenendas* and the *reddendo*. But no allusion whatever is made to the payment of burgh-cess, to watching and warding, or to any other prestations which are peculiar to burgage-holding. There is not therefore any reason to presume that the other duties here referred to are at all inconsistent with the tenure described in the *tenendas*.

The Respondent having laid before the meeting of freeholders a charter and sasine *ex facie* liable to no objection, the freeholders did right in giving effect to that charter; and they were neither bound nor entitled to inquire into objections of any kind attempted to be established from the anterior progress of titles. The Appellant seems to admit the general rule, as laid down in Mr. Wight's treatise on elections, to be, "that the freeholders have no "right to call for the warrants of the charter on "which the infeftment proceeds, or to object that "it is not conform to the signature, or to enter into "a discussion of a claimant's progress. His own "charter and infeftment are all that they are con-"cerned with; and if these are *ex facie* formal he "must be enrolled." The Appellant however contends that this rule, though applicable to all

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questions respecting a claimant's title, as in competition with other parties, does not apply to the evidence of the tenure by which the lands are held; but neither in the statutes which regulate the constitution and powers of the court of freeholders, nor in the decisions pronounced with reference to the jurisdiction of the freeholders thus established, is there any room for the distinction attempted by the Appellant.

As to the argument, that by the clause in the Act 1681, directing the freeholders of each shire or stewartry to "make up a roll of all the freeholders "within the same," "according as the same shall "be instructed to be of the holding, extent, or va-"luation foresaid," the freeholders are empowered to investigate fully the question, Whether or not the lands claimed on are truly of the holding required by law. The clause requires, not that the lands shall be of any particular holding, but that the freeholders to be enrolled shall be of that holding. If it could be contended that the holding of lands was to be instructed in any other manner than by the existing investiture, there can be no doubt that a freeholder is of the holding in which he is infeft. When the freeholders are spoken of, the holding intended must be the holding by the existing investiture. When the act directs the freeholders to be enrolled according as the same shall be instructed to be of the holding, &c. it merely requires that they shall be *de præsenti* infeft under the King in feu, ward, or blench.

This clause must be interpreted in conformity with the previous clause, which defines the qualifications

necessary for enrolment, and which it has already been shown looks no farther than the existing investiture. It is absurd to suppose that the statute, in describing the duty of the freeholders in making up the roll, should require them to go beyond the qualification which in the preceding clause that very statute had pointed out as the warrant on which enrolment was to proceed. The provision that the roll should be made up as the qualifications of the claimants should be instructed, can therefore make no change whatever in the nature of that qualification, as being an existing investiture and possession under the King in feu, ward, or blench.

As to the argument founded upon the connection in the clause of the words, holding, extent, and valuation, that, as the freeholders are not limited to any particular instruments as evidence of the latter, they are as little limited with regard to the former; although by the Act 16 Geo. II. cap. 11, it is provided that no one can be enrolled in respect of the old extent of his lands, unless such extent is proved by a retour prior to 16th Sept. 1681, yet it perhaps cannot be contended that such a retour is in itself an instrument constituting the old extent. It may perhaps be regarded merely as evidence, in opposition to which contrary evidence may be received. Were such a retour regarded as an instrument constituting the old extent, the freeholders would unquestionably be limited to that instrument, and would not be at liberty to look beyond it, or to consider what the extent ought to have been. As to valuation, if the actual valuation is established by a decree of the commissioners of supply, which is

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liable to no *ex facie* objection, the freeholders are bound to give effect to that decree, and are not entitled to refuse enrolment on the ground that the lands claimed on ought to have been differently valued. So also in relation to the holding, the Respondent has already shown that it is constituted by the charter and infeftment. The freeholders, therefore, cannot look beyond the instruments by which the holding is constituted, or enter into the question, What it ought to have been.

For the Appellant:—*Mr. J. P. Grant, Mr. W. Adam.*

The following authorities were cited:—*Dunbar* v. *Budge*, Dict. 8844, Elch. M. P. N° 36. *Scott* v. *Sutherland*, Dict. 8627. Kames, v. 3, p. 49, Fac. Dec. v. 1, p. 108. Elch. Dec. v. 2, p. 277. *Campbell* v. *Mure*, Dict. 7783. *Stewart* v. *Dalrymple*, Dict. 8579. *Abercrombie* v. *Alewood*, Fac. Coll. 17, June 1777. *Pirie* v. *Hay*, July 1777. *Sibbald* v. *Douglas*, Dict. 8857. *Carnegy* v. *Scott*, Id. 8858. Wight, 222. Bell on Elect. 238.

For the Respondent:—The *Attorney General* and *Mr. Wetherell.*

The authorities were principally the same as those cited for the Appellant: and also *Burn* v. *Adam*, Dict. 8852. *Adam* v. *Farquhar*, 4 July 1809. *Kibble* v. *Stewart*, 16 June 1814. *Montgomerie* v. *Ainslie*, May 23, 1821.

Judgment affirmed.