

## SECT. II.

## Can Retours be divided?—Retours of Church Lands.—Of Heritable Offices.—Objections to Retours.

1745. February 6. FREEHOLDERS of Lanark against HAMILTON of Westburn.

HAMILTON of Westburn claimed a vote in the election of a member of Parliament, in virtue of his being proprietor of the just and equal half of lands retoured to be a twenty-merk land, and produced a voluntary contract, *anno* 1671, by which the lands, before common, were divided between him and his neighbour.

*Objected*, That a possession of lands *pro indiviso*, and so extended, could not give a title to a vote; and the voluntary division could not mend the matter, since there being no legal division of the extent, it did not appear what was the proportion of it allotted to either.

*Answered*, The contract mentions the particular extent of the several farms, making up ten merks to each of their proportions.

The LORD ORDINARY, 7th January, on advice with the Lords, sustained the objection; and this day the LORDS refused a reclaiming bill, and adhered.

*Fol. Dic. v. 3. p. 405. D. Falconer, v. 1. p. 65.*

No 30.  
Lands that were common to two heritors retoured to above L. 4, being divided by voluntary contract, do not entitle either.

1747. February 10.

Sir THOMAS KIRKPATRICK and Others, Freeholders of Dumfries-shire, against IRVING.

Sir THOMAS KIRKPATRICK, and other Freeholders of the shire of Dumfries, in pursuance of the act 16th, Geo. II., entitled, "An act to explain and amend the laws touching the election of members to serve for the Commons in Parliament for that part of Great Britain called Scotland," applied to have Irving of Gribton struck off the roll of freeholders, on this ground, that the qualification on which he claimed a vote was the old extent, whereas his lands were church lands, which never were retoured.

*Alleged* for Gribton, That he produced a retour in 1659, in favour of Mary Welsh, as nearest lawful heir to John Welsh, her brother, in the four-pound land of Gribton, which bears, that these lands *valuerunt* of old L. 4 Scots, *et valent nunc* L. 12 Scots, and the statute on which the complaint is founded, neither requires nor admits any other proof of the old extent than a retour

No 31.  
Whether retours in church lands before the 1681 instruct the old extent?