

that the King could not interpose a superior between him and his vassal, and not his giving the infeftments; for in many cases he gave these to others than his vassals, viz. *supplendo vices*.

No 98.

Answered; That they behoved either to hold of the King or a subject; that the Earl Marischall's right was extinct by his forfeiture, and they were obliged to do all the services of vassals to the King; that it was a groundless distinction of holding of the King for the use of the public; and it might rather be said, all the King's rights were for the use of the public, though in some cases the trust was freer, in others he was more tied up; and a parallel instance occurred in those branches of the revenue, which were to be accounted for in Parliament; and yet the debtors in them were as much the King's debtors as where he had the absolute disposal; that the meaning of these estates being in the King for the use of the public, was explained by the first act relating to them, to wit, that the profits and proceeds thereof were to be disposed and applied to the use and benefit of the public, and for the case of his Majesty's good subjects, according to the direction of Parliament; but this had no influence on the holding.

It was *observed* on the Bench; That the vassals of regalities fallen into the King's hands for a time, were to be justified by his Judges, and attend his Parliaments, act 26th, Parl. 6. Ja. II.

THE LORDS sustained the qualifications to continue on the roll.

Act. H. Home.

Alt. Maitland.

Fol. Dic. v. 3. p. 413. D. Falconer, v. 1. p. 73.

1745. July 10.

FREEHOLDERS OF ABERDEENSHIRE against FORDYCE of Monkshill.

WILLIAM FORDYCE of Monkshill stood upon the roll of freeholders for the county of Aberdeen, as being infeft in the town and lands of Monkshill, valued at L. 80 Scots, and in two half-nets salmon-fishing, valued at L. 347, the whole extending to L. 427.

Objected to his title; That the act 1681 restricts the title to a vote to lands of 40s. old extent, or L. 400 valued rent; and the claimant has not lands to that extent or value, nor any lands contiguous to his salmon-fishing, but only a right of *jactus retis*.

It cannot be said every heritable right is comprehended under the term lands, nor yet every subject liable to the land-tax, as in England personal estates and offices are subject thereto, and with us feu-duties and teinds; feu-duties out of church-lands would not entitle the owner to be on the roll; and the late decision concerning teinds, was in the case of a person having bought

No 99.

Lands, with the valuation of a fishing, making up together the full valuation, entitle to vote.

No 99. in his own teinds, by which the disburthened property came to be of greater value. See Div. 3. Sec. 1.

The payment of cess had originally nothing to do with the right of voting, having begun in the time of the troubles in the reign of King Cha. I. and at first not only teinds and fishings, but coal-works and salt-works, and all the customs and casualties of lands, and, by act of convention 1667, annualrents and tack-duties were taxed.

The persons who sat in Parliament were such as held lands of the Crown, which maintained tenants fit for military service, and not fishings.

Answered; The late statute having made no alteration concerning the subjects on which a man is entitled to be a voter, the question is determined by the practice of the nation ever since the act 1681, which has been to sustain the titles of all proprietors liable to public burdens for L. 400.

In the language of the law, lands comprehend all heritable subjects, wherein a man is infeft, as in the law of death-bed. But by the act of supply, as ordinarily past, no person can act as a commissioner unless he have lands to the amount of L. 20 *per annum*; and the act 12th Anne, concerning elections, says, whereas several conveyances of lands have been made for elusory sums not equal to the value of the estates, using these words as synonymous.

A gentleman who holds a fishing is as properly a freeholder as he who holds a farm, and fishers as fit for military service as tenants.

THE LORDS sustained the title.

Reporter, *Lord Justice-Clerk.*

Act. *Burnet.*

Alt. *Ha. Gordon.*

Fol. Dic. v. 3. p. 415. D. Falconer, v. 1. p. 118.

* * * See No 68. p. 8656.

1745. July 10.

FREEHOLDERS OF DUMBARTONSHIRE *against* CAMPBELL of Succoth.

No 100.

Found in conformity with the above.

MR JOHN CAMPBELL, younger of Succoth, advocate, a freeholder of Dumbartonshire, was infeft in the fishing *infra bondas* lie Crookedshot, extended to two merks *tempore pacis*, which, joined with his two merk land of Succoth, made up an extent of four merks; but here this difference occurred betwixt this case and the former, in favour of the claimer, that he was possess of lands adjacent to the fishing, and to which it belonged.

THE LORDS sustained the title.

Reporter, *Lord Kilkerran.*

Fol. Dic. v. 3. p. 415. D. Falconer, v. 1. p. 119.