No 13. *Answered*, That the statute precisely confined the evidence to retours. THE LORDS adhered.

Act. *A. Macdowal.* Alt. *H. Home.* Reporter, *Lord Arniston.* Clerk, *Forbes.*
Fol. Dic. v. 3. *p.* 402. *D. Falconer, v.* 1. *p.* 84.

1745. *February* 22.
Sir MICHAEL STEWART *against* ARCHIBALD CAMPBELL of Ellersly.

No 14.

ARCHIBALD CAMPBELL of Ellersly, Writer to the Signet, claimed to stand upon the roll of freeholders for the shire of Renfrew, on the title of his said lands, all the old charters whereof bore them to be a five-pound-land; and a retour was produced, in which the descriptive clause also bore them to be a five-pound-land; but, in the *valent*, they were retoured to be worth one penny.

It was *urged*, That the retour was of a wadsetter, who held the lands of the reverser, for a blench-duty, with the casualties discharged; so that the Jury had only considered the burden upon the vassal, and made that the value; but the true extent appeared from the description supported by the charters.

THE LORD ORDINARY, on advice with the Lords, 'Found, that the retour founded on did not instruct the old extent of the lands, in terms of the act of Parliament; and the LORDS, on bill and answers, adhered.'

Reporter, *Lord Arniston.* Act. *A. Macdowal.* Alt. *Wallace.*
Fol. Dic. v. 3. *p.* 402. *D. Falconer, v.* 1. *p.* 83.

1746. *June* 14.
FREEHOLDERS of Linlithgowshire *against* CLELAND of Kincavel.

No 15.
Temporal lands, whereof the old extent is not distinct from the feu-duty, do not entitle to vote.

ROBERT CLELAND of Wester-Kincavel stood on the roll of freeholders for the county of Linlithgow, in virtue of his said lands, which were retoured thus: 'Et quod præfatæ terræ nunc valent, per annum, summam septem librarum sex 'solidorum et octo denariorum, monetæ hujus regni Scotiæ, et tempore pacis 'tantum valuerunt; et quod eædem terræ de S. D. N. Rege et suis successori-'bus in feudifirma et hereditate in perpetuum tenentur, pro annua solutione 'septem librarum monetæ prædict. apud festa Pentecostes, et Sancti Martini in 'hyeme particulariter, idque tanquam proportionalis partis summæ viginti sex 'librarum, quæ est feudifirma pro integris terris de Kinkavell persoluta, secun-'dum antiqua et originaria dict. terrarum infeofamenta, nomine feudifirmæ tan-'tum, una cum summa sex solidorum et octo denariorum, in augmentatione pro 'prædictis septem bovatis terrarum, plus quam unquam eadem pars et portio an-'tea persolverit.'

No 15.

Objected to his title, That the old extent was not distinct from the feu-duty; and, therefore, he could not claim a vote on the extent.

Answered, That the former duty and extent were different, and it was only by the augmentation of the rental that the feu and retoured duties became the same; so that it appeared the Jury had not filled up the valent clause with the *reddendo*.

Replied, That the augmentation could not be made by the retour, but by some prior, and, probably, long prior deed; so that the augmented duty was the *reddendo* at the time of taking the inquisition, which the Jury, according to custom, had made the valent; and there arose a presumption from the real value of the lands in proportion with that of others, that this was not the old extent.

The cause being reported, it was further *urged* for the defender, That, by the late statute, all votes on the extent being cut off, unless it were proved by a retour; therefore, when the extent was so proved, the title behoved to be sustained: Neither did this act refer to the former 1681, by which the old extent behoved to be distinct from the feu-duty. And, besides, the meaning of this rule was mistaken; for, it was not that the sums necessarily behoved to be different, but that the lands behoved really to have been so extended, and not the feu-duty filled up in the place of the extent, of which there was no evidence here, nor was the thing to be presumed.

For the complainers, That the late statute did not make a retour probative, which was not so before; and granting the defender to have put a right interpretation on the expression of the extent and feu-duty's being distinct, yet, when the sums were the same, it was to be presumed that the one was put for the other: And it was of no consequence in the argument, that this was the same in effect with excluding all titles where the sums were alike, now that the evidence was confined to a retour; for, by the act 1681, other evidence might have been brought of the lands being extended.

THE LORDS, 4th June 1745, repelled the objection.

Pleaded further in a bill for the complainers, That, even by the late act, there might still be a mean of proof competent, if the lands were really extended, for that there were other retours than those of heirs.

On answers, the LORDS, 4th June 1746, sustained the objection.

Pleaded in a bill for Kincavel, That the act 16th George II. was not only intended to carry into effect the statute 1681, but also to explain and amend it, as appeared from the title; and this act having expressed in the preamble, 'That 'great difficulties had occurred in making up the rolls of electors by persons 'claiming to be inrolled, in respect of the old extent of their land, where the 'old extent did not appear from proper evidence;' went on to enact, without any reference to the act 1681, that the old extent should be proved by a retour, and so took away all objections from the retoured duties and extent being the same. There was another instance of an alteration from the old statute made by

No 15. this; for, whereas formerly, when the extent of lands did not appear, the heritor was entitled to claim a vote, if he had L. 400 of valued rent; from which it was doubted if he could vote upon his valuation, when the extent appeared and did not amount to 40s. this was amended, and the valuation in all cases made a sufficient qualification.

The defender's retour would, according to the act 1681, have sufficiently instructed his extent, as it was retoured distinct from the feu-duty; the ordinary stile of those which the act intended to exclude being, *Et quod præfatæ terræ nunc valent per annum feudifirmas et devorias subterscript. et tempore pacis tantum valuerunt.*

THE LORDS refused the petition, and adhered.

Reporter, *Balmerino.* Act. *H. Home, Ferguson, & Ramsay.* Alt. *Graham sen. Lockhart, & Philp.* Clerk, *Murray.*

Fol. Dic. v. 3. p. 405. D. Falconer, v. 1. No 115. p. 138.

1747. *June* 24. FREEHOLDERS of Perthshire *against* M'ARA.

No 16.
The objection sustained, that the old extent was retoured to the same sum with the feu-duty, though there was a retour of the old extent separate from the *reddendo.*

IN the case of the Freeholders of Dumfries-shire against Irving of Wysby, the LORDS sustained the objection to a retour, that it was of feu-lands, and the old and new extent and the feu-duty retoured to be all the same; in respect of the clause in the act of Parliament 1681, which requires the old extent in retours of feu-lands to be distinct from the feu-duty; and gave the like judgment in June 1746, Freeholders of Linlithgowshire against Cleland of Kincavel, No. 15. p. 8574. The like question now again occurred, Freeholders of Perthshire against M'Ara of Drummie, and the like judgment was given.

The Lords understood this clause in the act as a declaration of the Legislature, that where the old extent in the retour and the feu-duty was the same, the old extent was no other than a random answer by the Jury to that head of the brieve, as often the answer to that head of the brieve appears to be by retouring the feu-duty, tax-ward, or blench-duty, as the old extent.

This clause in the act of Parliament has ever been thought dark; but the meaning of it was by some of the Lords thought to be, not that the feu-duty and the retour-duty should be different sums, as there was nothing to hinder the feu-duty and old retour-duty to coincide in the sum, but this, that, beside the *reddendo* of the feu-duty, there should be a separate retour of the old extent, and that, wherever there was such separate retour, it was a good retour, notwithstanding the feu-duty and retour-duty were the same.

But the Court was, as has been said, of a different opinion. Withal, as the judgments in the two former cases had settled this point in the shires of Dumfries