Mr Erskine, he preferred a complaint to the Court of Session, which was followed with answers, replies, and duplies. No 46.

"THE LORDS found, that the freeholders had done wrong, and ordered Mr Erskine to be admitted to the roll."

Act. *Robertson, Cathcart, et alii.* Alt. *Lord Advocate, Williamson, et alii.*

Clerk, *Gordon.*

*C.* *Fac. Coll. No* 122. *p.* 236.

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1790. *December* 9. DICKSON *against* DOUGLAS.

No 47.

OBJECTED, That a decree of division had been produced, without any proof of the real rents, except by parole testimony of one of two witnesses; the other, who was the tenant of the lands, having neither sworn to the *quantum* of the rents, nor signed the tacks, as relative to his deposition, though he swore that the rents, specified in his tacks, were the real rents which he paid. But the rents contained in his tacks agreed perfectly with those deponed to by the other witnesses.—THE LORDS found, that the decree of division being formal, must be held good till set aside by reduction.—*See* APPENDIX.

THE same found, though a process of reduction of the decree had been actually brought, and was depending at the time when the objection was made; December 1790, Cheap against Morehead.—*See* APPENDIX.

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

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1791. *February* 23. FREEHOLDERS of ORKNEY *against* JOHN TRAIL.

No 48.
A decree of valuation, *ex facie* regular, though liable to exceptions, is to be sustained, until set aside by reduction.

At a meeting, in July 1790, for electing a Member of Parliament for Orkney and Zetland, Mr Trail was enrolled upon a qualification, which in part consisted of the valuation of certain superior duties, payable to Sir Thomas Dundas, to whose predecessor, the Earl of Morton, the Crown had granted them. In a complaint preferred against this enrolment, it was *objected*, That this part of the valuation ought not to have been admitted by the freeholders; and, in support of the objection, it was

*Pleaded*, Before the general valuation, the duties payable out of lands that held feu of the Crown were not valued; or, at least, no supplies corresponding to them were paid to the Crown; so that the rents of Crown-vassals lands were valued *minus* the feu-duties. This appears from the act of Convention of 1643, and the act of Parliament of 1649, cap. 21.

Of lands feued by subject-superiors, the valuation was laid partly on the feu-

No 48. duties, and partly on the rent paid by the subvassal; and when a forfeiture of the subject-superior happened, or in the case of church superiorities assumed by the Crown, by which means the subvassal came to hold immediately of the Crown, he was not, beyond the extent of his own valuation, either liable to public burdens, or entitled to any privilege.

With regard to Orkney, a considerable part of the lands had been feued out by the Crown prior to the general valuation of that country in 1653; and, in valuing these lands, the feu-duties were deducted, as mentioned above. When these feu-duties, together with the property-lands, were conveyed to the Earl of Morton, they received a separate valuation; and he and his successors have ever since paid cess for them, while the landholders pay only according to their real rents. Those duties, therefore, ought not to have been included in the valuation in question.

It has been found, that a grantee of feu-duties, formerly payable to an Abbey, was not, by the valuation of them, entitled to vote. Nor was it contended, that the vassal by whom they were paid had any better title; Campbell against Campbell, 17th January 1755, No. 52. p. 8647. Feu-duties, in that situation, confer no right of voting. Had they been payable to the Crown at the time of the valuation, as they would not have been valued at all, no person would have voted upon them, and the accident of their being valued does not make any material difference.

*Answered*, The rescinded statute of 1649, above quoted, directed the Commissioners to report the yearly value "of all feu or tack-duties payable to any "person, his Majesty's duties excepted." Thus it is evident, that of lands held of the Crown, the full yearly value was to be reported; and the same thing may be said of those held of subject-superiors, the separate valuation of the feu-duties serving probably as a rule for proportioning the public taxes between the superior and the subvassal.

In the act of Parliament 1681, accordingly, nothing is said of any deduction from the valued rent on account of feu-duties, though, with respect to the old extent, these are expressly distinguished. Nor could the circumstance of the Crown-rents being conveyed to the family of Morton, influence the rights or privileges of the Crown-vassals.

The notion of a subvassal's privileges being limited by his valuation *minus* the feu-duties, seems to be groundless. But if, as is said, their situation, in respect of burdens and privileges, continued the same, after their becoming immediate vassals of the Crown, by parity of reason the landholders of Orkney should be as little affected by that grant.

The complainers plea, indeed, is inconsistent with the most indisputable circumstances. The feus of the Crown's property-lands being granted without diminution of the rental, the feu-duties must have been at least equal to the rent. But if, immediately before the valuation in 1653, a feu had been granted, when the feu-duty, real rent, and valued rent, would naturally be all the

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.

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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