

1755. *January 17.*CAMPBELL of Monzie *against* FREEHOLDERS of the County of Stirling.

CAMPBELL of Monzie having purchased from Sir James Stirling of Glorat, the superiority of the lands of Kilwinnet, contained in one cumulo-valuation with Sir James's other lands in the parish of Campsie, an application was made to the Commissioners of Supply to divide the cumulo-valuation, and to ascertain the proportion to which Monzie's purchase should be subjected. This was done, not by a proof of the present rent of each parcel, but by a proof of the use of payment of cess. Monzie having produced this decree of the Commissioners, as evidence that the lands of Kilwinnet were L. 400 and upwards of valuation; the other freeholders objected, that the decree was no sufficient evidence; because the Commissioners did wrong in not taking a proof of the present rent, which was the only proper method for splitting the cumulo-valuation.

'THE LORDS repelled this objection for the following reasons.'

There are three methods of dividing a cumulo-valuation; *1mo*, The real rent of the several parcels at the time when the valuation was made; *2do*, The use of paying the cess; *3tio*, The present rent. The first is undoubtedly the most accurate method; and is always to be preferred where evidence can be had. When the land-rent in Scotland was valued, in order to lay on the cess, the cumulo-valuation of each man's property within a parish, was undoubtedly ascertained from a view of the rent paid by each farm; and consequently each farm bore a part of the cumulo-valuation, in proportion to the rent it then paid. If at a distance of time it comes to be impracticable to ascertain the original rent, the next best method is to lay hold of the use of paying the cess, which, if of a long standing, is presumptive evidence of the original rent; because the use of payment is commonly ascertained from the real rent. The present rent is the worst method; being a very uncertain rule by the fluctuation of rent. Put the case, of two farms of the same extent and original rent, which belonging to the same heritor at the time of valuation, were valued *in cumulo* at L. 800: Both farms are feued out, and each feuer undertakes, as he ought to do, cess corresponding to L. 400 valuation. One of these feus, in process of time, is greatly improved; the other not at all; by which means the present rent of these two feus is very unequal. The superior disposes the superiority of the feue which is improved; and if the present rent were to be the rule of division betwixt the vender and purchaser, the former would have no vote; because so much as the purchaser's feue is valued above L. 400, so much under it must the other be valued. And yet had there been a regular division, while the memory of the original rent remained, both must have been entitled to a vote.

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The use of paying the cess is a good rule for splitting a cumulo-valuation.