

“ THE LORDS repelled the objections to the qualifications of the complainer, and ordained his name to be added to the roll of freeholders of the county of Stirling.” See Div. 4. Sect. 1. *h. t.*

No 51.

Act. *And. Macdowal et R. Bruce.* Alt. *Lockhart et And. Pringle.* Clerk, *Forbes.*
B. Fol. *Dic. v. 3. p. 407. & 408.* Fac. *Col. No 127. p. 188.*

1755. January 17.

PATRICK CAMPBELL of Monzie *against* JAMES CAMPBELL of Ardkinglas.

No 52.
 Found in conformity with the above.

AT the meeting for electing a Commissioner to Parliament from the county of Stirling, mentioned in the preceding case, Patrick Campbell of Monzie claimed to be enrolled in the roll of the freeholders entitled to vote. His claim was founded, partly upon his right to the superiority of certain lands, which had been disposed to him by Sir James Stirling, and partly upon his right to certain feu-duties, payable out of the lands of Bothkennar, which had originally belonged to the abbacy of Cambuskenneth, and after the Reformation had been erected into a temporal Lordship; to which feu-duties Mr Campbell of Monzie had acquired right.

It was *objected* by James Campbell of Ardkinglas, one of the freeholders, That Mr Campbell of Monzie was not entitled to be enrolled; *1st*, Because he was not infeft in either the property or superiority of the lands, out of which the feu-duties were payable; for the vassals in these lands had taken the benefit of the acts of annexation, and held their lands immediately of the Crown; so that they were not vassals to the claimant, who, by his charter, had no other right than that of uplifting the feu duties; which could no more entitle to a vote, than a perpetual annuity upliftable furth of lands; *2dly*, That the valuation of those lands purchased from Sir James Stirling had not been properly divided from the original valuation *in cumulo* of the lands of Glorat, whereof they were a part; as the Commissioners of Supply had not taken a proof of the real rent of the lands, but only of the use of payment of the cess.

The majority of the freeholders sustained the objections; and Mr Campbell of Monzie complained to the Court of Session, and *pleaded*, for obviating the first objection, *1mo*, That he was the Crown's vassal in these feu-duties, and that 'they were liable in public burdens for his Majesty's supply;' and as their valuation, joined to the valuation of the complainer's other lands, is above L. 700 Scots, he was, in terms of the act 1681, entitled to a vote. These feu-duties were the rents of the lands at the time when the lands were feued out; the complainer is entitled to use a pointing of the ground for payment of them, and has a preferable right in the lands to the vassals, who have only right to the new or improved rent, after the feu-duties or old rent is paid.

No 52.

2do, That the act 1681 ought to be beneficially interpreted, so as to comprehend every heritable subject holding of the Crown, and liable in the payment of public burdens, though these subjects should not be lands in the strict sense of the word, as it is for the advantage of the constitution that all the property in the kingdom be represented in Parliament, and that those who bear the burden of the taxes should have a share in laying them on; and as these feu-duties in Scotland, which formerly belonged to churchmen, amount to about L. 60,000 Sterling yearly, it would be very improper to exclude the proprietors of them from a representation in Parliament.

3tio, The Court of Session has in many instances interpreted the words of the act 1681 more extensively than is now contended for. Thus, 29th January 1745, Sir Patrick Dunbar *contra* Sinclair of Bremster, No 42. p. 8627. it was found, That one infeft in teinds holding of the Crown, was entitled to vote upon their valuation, although teinds fall but very improperly under the denomination of lands, and are rather a servitude on the lands; and are not *debitum fundi*, as these feu-duties are, but only *debitum fructuum*. And, Freeholders of Aberdeenshire *contra* Fordyce of Monkshill, *infra h. t.* and Freeholders of Dumbartonshire *contra* Campbell of Succoth, *infra h. t.* a right of salmon fishing was found to entitle to a vote; in the former of which cases the claimer had no right to the adjacent lands; and as the extension in the above cases was most just, because the teinds and fishings were rights holden of the Crown, and liable in public burdens for his Majesty's supplies, so the act ought also to be extended so as to comprehend the said feu-duties; for, as Cicero observes, *valeat æquitas quæ paribus in causis paria jura desiderat*.

It was *answered* for James Campbell of Ardkinglas, That it appears from our ancient acts of Parliament, that none but proprietors of lands were obliged to give attendance in Parliament; and from our later ones, that none but such proprietors were entitled to elect representatives to Parliament; particularly the act 1681, and 16to Geo. II. (which are now the rule,) expressly mention 'lands holden of King or Prince.' The complainer's right to the feu-duties, is undoubtedly no right to lands either in property or superiority. The right in his charter is thus described. 'Et similiter omnes et singulas feudifirmæ divo-
'rias subtus specificat. solubiles ex terris postea mentionat. pertinen. ad personas
'postea mentionat. feudifirmarios et portionarios de Bothkennar respective,' &c. and the vassals who were the proprietors of the lands hold them immediately of the Crown, and not of the complainer; and therefore this right to the feu-duties can no more entitle to vote, than a perpetual annuity or annualrent could; for it is not the paying of cess, but the holding lands of the Crown, that entitles to vote. And however proper the complainer's arguments for extending the act 1681, so as to comprehend his case, might be before the Legislature; yet they can have no place in a court of law, which must decide according to the words of the law, without regard to considerations of expediency. If the Court has already extended the law, so as to comprehend subjects not di-

rectly falling under it, that is no reason for extending it further to other subjects. But the cases mentioned by the complainer were no undue extension; for, in the case of Sir Patrick Dunbar *contra* Sinclair, it was only found, that the valued rent of the teinds to which the proprietor of the lands had acquired right, might come *in computo* with the valuation of the lands: And justly; for when the proprietor of the lands had acquired right to the teinds, they ceased to be a servitude or burden on the lands, and the lands became liable for the whole valuation of both stock and teind. But it never was found, that a titular of the teinds of other mens lands was entitled to vote, where the valuation of the teinds exceeded L. 400 Scots. And a right of salmon fishing falls properly under the description of lands, because, by the common principles of law, the channel of a navigable river, as well as all the emoluments and advantages arising from the river, are considered as part and pertinent of the adjacent grounds.

The arguments with respect to the manner of dividing the valued rent, were the same with those used in the case immediately preceding.

THE LORDS repelled the objections to the complainer's qualification, so far as concerned the division of the valuation of the lands derived from Sir James Stirling; but sustained the objection made to that part of the qualification founded upon the title to the feu-duties payable out of the lands of Bothkennar; and therefore dismissed the complaint. See Div. 4. § I. *h. t.*

Act. *And. Macdowall, Ro. Dundas & Bruce.* Alt. *Lockhart & And. Pringle.* Clerk, *Forbes. B.*
Fol. Dic. v. 3. p. 407. & 408. Fac. Col. No 128. p. 190.

* * * This case is reported by Lord Kames, No 9. p. 2443. *voce* COMMISSIONERS OF SUPPLY.

1768. March 10.

WILLIAM DOUGLAS of Bridgetoun, and WILLIAM MILN of Bonnitoun, *against* ALEXANDER ELPHINSTON, Advocate.

MR ELPHINSTON was enrolled in the roll of freeholders for the county of Forfar at Michaelmas 1767. Mr Douglas and Mr Miln complained to the Court of Session, of the judgment of the freeholders, enrolling Mr Elphinston, and stated sundry objections to his qualification, and, among others, an objection to the division of the valued rent of the lands upon which he claimed.

The COURT, upon advising the petition and complaint, answers, &c. 22d Jan. 1768, 'Sustained the objection with respect to the valuation of the respondent's lands, and find, that the freeholders did wrong in admitting the respondent, Mr Alexander Elphinston, to the roll of freeholders for the county of Forfar, at

Objected to a claim, that the division of cess was erroneous, in respect that two *cumulos*, in different parishes, had been conjoined, which ought to have been kept separate.