

1754. March 6. CAMPBELL *against* STIRLING.

No 74.

A DIVISION by a private meeting was found to be homologated by a reference made to it by a meeting regularly called. This decision was affirmed on appeal.

Fol. Dic. v. 3. p. 412. Fac. Col.

. See the particulars, No 8. p. 2439, *voce* COMMISSIONERS OF SUPPLY.

1755. February 18.

THOMAS FORRESTER of DENOVAN, *against* Sir GEORGE PRESTON of Valleyfield.

No 75.

SIR GEORGE PRESTON was enroled in the roll of the freeholders of the county of Stirling entitled to choose a representative to Parliament, at their meeting held for election 17th May 1754.

Thomas Forrester, one of the freeholders, complained of the enrolment to the Court of Session, and *objected*, That the defender's lands were not of L. 400 valuation, and that the Commissioners of Supply, who had lately disjoined their valuation from the original valuation *in cumulo* of the barony of Airth, whereof they were a part, had made a wrong division on purpose to create a vote to the defender. For, *1st*, The committee of Commissioners, in taking a proof of the rent of these parts of the barony which belong to Mr Graham, and had been feued out by him and his authors, had only taken a proof of the feu-duties payable to Mr Graham; whereas, when any of the defender's lands had been feued out, they had taken a proof of the real rent of these lands, as appeared from the minutes of the Commissioners of Supply, where this unfair proceeding of the committee was objected against. *2dly*, The committee had omitted altogether to take a proof of the rent of some parts of the barony which belonged to Mr Graham, amounting to L. 412 Scots yearly which had been objected against the report of the committee when made to the general meeting of the Commissioners of Supply, and the pursuer had offered to instruct the objection to the meeting of freeholders by the affidavits of the tenants in these parts of the barony, and now offered to prove these facts by them and by other witnesses.

Answered for the defender; *1mo*, That the feu-duties were the real rents of the lands at the time they were feued out, and that the encrease of the real rent was owing to the feuers building houses on their feus; and therefore that the feu-duties ought to be considered as the rent, conform to which the valuation of the lands should be divided. *2do*, That the feues belonging to Mr Graham were numerous and small; so that a proof of the real rent of them would have been very difficult, if not impossible, especially as many of them

If the division of the valuation, of lands appear *ex facie* to be regular, the court of freeholders ought not to reject it, nor will the Lords set it aside by exception, altho' the objector offer to prove that it was made improperly and without evidence; tho' it may be set aside by reduction.

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are in the natural possession of the feuers; and although it is was an error not to follow the same rule in the proof of the rent of the defender's part of the barony, yet the error did not affect the defender's qualification for voting; because, though the difference betwixt the real rent and the feu-duties, which is only L. 59 : 13 : 4 Scots, were deducted, still the valuation of his lands would exceed the L. 400 Scots.

And as to the allegiance that the Commissioners had altogether omitted to take a proof of the rent of some parts of the barony belonging to Mr Graham, *answered*, That the affidavits were no legal proof of the fact; and that the meeting of the freeholders could not take a proof of it; but behoved to consider the decree of the Commissioners of Supply as proper evidence of the valuation, unless an error had appeared *ex facie* of the decree; and as in this complaint, the Lords are only reviewing the proceedings of the freeholders; therefore if they did right, the Lords must affirm their judgment, although the decree of the Commissioners should be liable to be reduced, when a proper process is brought for that purpose.

Replied for the pursuer; That the real rent of the feus holding of Mr Graham, in one part of this estate alone, exceeds the feu-duties payable to him out of that part by L. 700 Scots of yearly rent; and the whole of this difference is not owing to the rents payable for houses, but is partly rents of lands; of which a proof by witnesses was offered; and it was *contended*, That a proof of this, and of the other allegiance, viz. that part of Mr Graham's real rent had been omitted to be proved, was competent, both before the freeholders and in this process; because, although the freeholders cannot reduce the decrees of the Commissioners of Supply, yet they are judges, in the first instance, of the Commissioners' decrees of division, so far as concerns the right of voting for Members of Parliament; and not only may, but ought, to disregard these decrees, when they appear to be partial and iniquitous, and that whether the iniquity appears *ex facie* of the decree, or the objections are offered to be proved by unexceptionable evidence: That, in the present case, it appeared, from the decree of the Commissioners, and from the minutes of election by the freeholders, that these objections, which were undoubtedly relevant, had been made, and a proof of them offered to the Commissioners and to the freeholders, and that they had both refused to admit the proof. This was the wrong complained of; and, for that reason, subject to the review of the Lords in this complaint. Were it otherwise, the right of electing Members of Parliament would be put, not into the hands of the freeholders, but entirely in the power of the Commissioners of Supply; since, if this method of obtaining redress was prevented, it may be justly called in question, whether any particular freeholder could pursue a reduction of the decree of the Commissioners of Supply; seeing he could have no pecuniary interest in the matter?

“ THE LORDS dismissed the complaint.”

No 75.

Act. *J. Dundas & Cockburn.* Alt. *Lockhart & A. Pringle.* Clerk, *Forbes.*

B. *Fol. Dic. v. 3. p. 411. Fac. Col. No 141. p. 212.*

1760. July 24. EARL OF HOME *against* STEPHEN BROOMFIELD.

STEPHEN BROOMFIELD was proprietor of certain lands holding of the Earl of Home, and of other lands holding of the Crown, all lying in the shire of Berwick.

Broomfield applied to the Commissioners of Supply, setting forth, that all his lands were charged in the cess-books *in cumulo*; and craving, That the cess of the respective lands should be divided in proportion to the real rent. The Commissioners took a proof, and pronounced a decret of division.

The Earl of Home *contended*, That by this decret, the lands holding of him were valued too low; and brought a reduction of it upon this, amongst other grounds, That it was null, in respect the Earl, the superior, was not made a party to the process of division before the Commissioners of Supply; and he *insisted*, That as freehold qualifications are now esteemed a valuable property, and as the tendency of the process of division was to restrict the valuation of the lands of which he was superior, he had a manifest interest in the question, and ought to have been made a party.

Answered for Stephen Broomfield, No law requires, that superiors be called in divisions of valuation. The acts of convention, and acts of Parliament, which authorise Commissioners of Supply to make such divisions, mention no such thing; and the universal practice proves, that it is not necessary. The Crown is superior of all the lands in Scotland; and yet the officers of state are never called in divisions of valuation. If then it were necessary to call the superior, all divisions hitherto made would be void.

“ THE LORDS repelled the reasons reduction.”

Reporter, *Auchinleck.* For the Earl of Home, *Lockhart.* Alt. *Ferguson.* Clerk, *Kirkpatrick.*
W. N. *Fol. Dic. v. 3. p. 409. Fac. Col. No 240. p. 439.*

1774. March 10.

GEORGE ROSS and Others, *against* SIR RODERICK M'KENZIE and Others.

SIR RODERICK M'KENZIE, and certain other gentlemen, having claimed to be enrolled as freeholders of the county of Inverness, their claims were rejected by the Michaelmas meeting, as being founded on decrees of division of *cumulo* valuations that were exceptionable. Complaints were preferred to the

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In an application to the commissioners of supply, for dividing the valuation of lands which are charged *in cumulo* in the cess-books, found unnecessary to make the superior a party.

No 77.

It is competent to any freeholder to challenge de-