

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

No 103.

Feu-duties of church-lands, the vassals of which hold of the Crown, afford no qualification.

THE abbacy of Cambuskenneth, containing the feu-duties payable by the vassals of Bothkennar, being, after the Reformation, erected into a temporal lordship in favour of the Earl of Mar, a parcel of these feu-duties came by progress into the person of Campbell of Monzie; and as the lands, out of which his feu-duties were payable, were valued above L. 400 Scots, he insisted upon this right as a sufficient qualification to entitle him to a vote. In answer to this claim, it was premised, that all superiorities of church-lands are now in the Crown; that the vassals hold their lands immediately of the Crown; and consequently, that the lords of erection, who have right to the feu-duties, have no other ground to take up, but that of being assignees from the Crown to the feu-duties. Hence it was *objected*, That a right to such feu-duties is no qualification. No man upon the act 1681 can have a qualification, unless he be infeft either in property or superiority. The lord of erection or his assignee having right to the feu-duties, is infeft in neither. A feu-duty is not a subject of feudal holding; it is only the *reddendo* of a feudal holding. The King is superior of the lands out of which these feu-duties are payable; and *qua* superior, he would be entitled to these feu-duties, were they not by act of Parliament separated from the superiority, and bestowed upon a third party, who has thereby the precise same right that an assignee to feu-duties would have. Monzie therefore cannot qualify that he is vassal to the Crown in these feu-duties; for, in effect, he is assignee only. Neither can he qualify that he holds these feu-duties as a superiority; because the vassals who pay these feu-duties are not vassals to him, but to the Crown.

THE LORDS sustained the objection; and found, that feu-duties of church lands reserved to the lords of erection afford no qualification for a vote.'

N. B. The feu-duties reserved to the lords of erection have been in use to be conveyed by infeftment; with this difference only, that whereas the original erection of church lands into a temporal lordship was completed by taking infeftment in the lands to be held of the Crown, infeftment was now taken in the feu-duties in place of the lands, and the symbol altered from earth and stone to a penny money, as in an annualrent right. This practice, which has been influenced by the reliance upon an infeftment, as of all the most secure form, is irregular, and I may say absurd, for the reason above given, that feu-duties are not a feudal subject that can be held of a superior, or upon which infeftment can pass.

Fol. Dic. v. 3. p. 414. Sel. Dec. No 77. p. 102.

* * See No 52. p. 8647.

* * A decision similar to the above was pronounced, Buchanan against Freeholders of Stirlingshire, Sec. 5. of this Division.