

but exclusive. A line of division may not have been actually drawn between them ; but there can be no difficulty in dividing a field or any number of fields into two halves. In half of each of their properties, then, each of the claimants is infest. Now, to split the valuation, surely no proof of the real value could be necessary. The Commissioners of Supply are not tied down to any particular mode of proof, but are entitled to proceed according to the best of their judgment. The whole lands were valued at £800 ; and as each claimant had the half of every parcel of lands of which the whole was composed, they could not possibly err in fixing the valued rent of the halves of each of their separate parcels at £400. This surely is as just as a conjectural proof of the real rent could be.

Sir George Abercrombie had, previous to the meeting, brought a reduction of the decree of the Commissioners, which was reported to the Court by the Lord Ordinary the same day on which the petition and complaint was advised.

The Court held that the proceedings of the Commissioners in this case did not in fact make a division of the valued rent. A division by acres and roods would not be enough, as the east half of each field might be more valuable than the west, or *vice versa*. The lands must have been divided into two distinct parcels, of precisely equal value in respect of real yearly rent ; and if one of the claimants was proprietor of one of these parcels, and the other of the other, a division of the valued rent might in this way have been made. But it was quite impossible to sustain a division as giving each just £400, which, without any division of the property, assumed the rent of the east half as equal to the rent of the west half of each part of the lands, and assigned half of the valued rent to each.

In the petition and complaint, the Court (10th February 1807) accordingly dismissed the complaint, found each liable in the statutory penalty of £30, and expenses.

And in the reduction (10th February 1807) they sustained the reasons of reduction, with expenses.

Which judgments were respectively adhered to (3d March 1807) by refusing petitions without answers.

Lord Ordinary, <i>Armadale</i> .	For Complainers, <i>Cathcart</i> .	Agent, <i>W. Inglis</i> , W. S.
Alt. <i>Monyhenny</i> .	Agent, <i>G. Stewart</i> , W. S.	Clerk, <i>Mackenzie</i> .

F.

Fac. Coll. No. 269. p. 604.

1807. March 3. SOUTAR *against* FERGUSON of PITFOUR.

AT the election for choosing a representative in Parliament for the county of Aberdeen, 24th November 1806, Stewart Soutar, factor to the Earl of Fife,

No. 11.
Nominal and
fictitious
qualification.

No. 11. claimed to be enrolled as a freeholder, and produced as his title a disposition by Lord Fife, dated 29th July 1803, in favour of Soutar, and the heirs-male of his body; whom failing, to the Earl himself, and his heirs in the subsisting entail of the estate of Braco. It also contained this provision, that, in the event of Soutar's selling the property, he shall make the first offer to Lord Fife, or his heir of entail. It was not alleged that any price was paid for this vote, or any expense incurred in making up his titles.

It was objected, that the clause of return and pre-emption, united with the other circumstances to make this a nominal vote, as was found in the case of David Soutar, (No. 6. APPENDIX, *supra*.) In answer to this, a discharge and renunciation, executed by Lord Fife, 17th November 1806, was produced, which declares: 'And whereas I now understand that the substitution and clause of pre-emption above mentioned have been, (contrary to my intention and understanding,) interpreted, or alleged to afford a presumption, that the disposition above narrated was not real, absolute and independent; therefore, in order to remove every objection, and without hurt or prejudice to the absolute right, conveyed to the said Stewart Soutar by the foresaid disposition, but in corroboration thereof, do hereby, for me, my heirs and successors whatsoever, renounce and discharge the whole provisions and conditions of substitution of my heirs, and the right of pre-emption conceived in my favours by the disposition above narrated, and in the instrument of sasine following thereupon.'

Soutar, at the meeting when his claim was objected to, offered to take all the oaths required by law, and to answer all pertinent interrogatories regarding the nature of his titles, and the objections urged against them on the head of nominality.

The meeting rejected the claim.

Soutar complained to the Court against this judgment of the Freeholders. The Court had no difficulty in dismissing the complaint. The object in view was clearly to increase the Noble Lord's political influence. The original constitution of the grants shewed the intention distinctly, which the discharge could not cure; as the moment after it served the present political purpose, the confidential connection between the parties was such, that, on Lord Fife's requisition, it would be delivered back; and but for this, it is obvious that the vote would not have been created.

Three other votes, in exactly similar circumstances, were claimed by other dependents of Lord Fife; and the same fate attended the whole of them.

Act. Gordon. Agent, W. Inglis, W. S. Alt. Hamilton. Agent, Jas. Dundas, W. S.
Clerk, Mackenzie.

F.

Fac. Coll. No. 274. p. 616.