

1757. November 20.

JOHN FORDYCE of Gask *against* URQUHART of Meldrum.

In a complaint by John Fordyce of Gask against Urquhart of Meldrum, and other freeholders of Aberdeenshire, for refusing to enrol him in the roll of freeholders for that county; the title he founded on was a retour in the year 1513, which retour, in answer to the first head of the brieve, viz. 'De quibus terris et annuis redditibus quondam Thomas Burnet obiit sasitus?' bears the answer in these words, 'Qui jurati dicunt, Quod quondam Thomas Burnet, pater Willielmi Burnet, latoris præsentium, obiit ultimo vestitus et sasitus de terris de Gask, cum suis pertinentiis, jacen. &c. et de uno annuo redditu tredecem solidorum et quatuor denariorum usualis monetæ Scotiæ, annuatim de terris de Balinalie, jacen.' &c. And,

In answer to the fifth head of the brieve, viz. 'Et quantum valent dictæ terræ et annuus redditus nunc per annum; et quantum valuerunt tempore pacis?' the retour bears, 'Et quod dictæ terræ et annuus redditus valent nunc, per annum, duodecim mercas, et valuerunt decem tempore pacis.'

*Objected* for Urquhart of Meldrum; The act of the 16th of the King provides, 'That no person shall be entitled to vote, in respect of the old extent of his lands holden of the King or Prince, unless such old extent is proved by a retour of the lands, of a date prior to the 16th September 1681. And, 2dly, That no division of the old extent, made since the aforesaid 16th September 1681, or to be made in time coming, by retour, or any other way, is or shall be sustained as sufficient evidence of the old extent.' But here the retour contains not only the lands of Gask, but also an annualrent of one merk out of other lands; and there is no room for division since the year 1681.

*Answered* for Gask; All that the law of the 16th of the King requires is, that it be proved, by a retour prior to the year 1681, that the lands on which the title is founded were a forty-shilling land of old extent. Now, it is *triti juris*, that annualrents are retoured *valere seipsum*; and therefore, deducting the value of the annualrent from the retour, which it is absolutely certain must be exactly one merk, there is a proof incontrovertible, that the lands of Gask were, of old extent, nine merks; which is far more than the forty-shilling required.

THE LORDS found John Fordyce entitled to be enrolled.

For Fordyce, *W. Grant.*

For Urquhart, *Burnett, Ferguson.*

J. D.

*Eol. Dic. v. 3. p. 405. Fac. Col. No 61. p. 99.*

No 36.

Objected against a claim, that the retour contained an annualrent not separated from the extent of the lands.

Answered, an annualrent is always retoured *valere seipsum*, and deducting it there remains more than the requisite valuation. The objection was repelled.