

“ 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

No 76.

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-

No 77.
crees of valuation, tho' he has no other interest in challenging it, than merely to support objections to the enrolment of freeholders.

Court against this refusal; and the freeholders, besides giving in answers to them, instituted an action of reduction, at common law, of these decrees. In the course of it, a hearing, in presence, was ordered on the two following points; *1st*, The jurisdiction of the Court of Session to review or correct the proceedings of the Commissioners of Supply with respect to valuations; and, *2dly*, The title of the pursuers, as freeholders and land-owners in the county, to challenge the decrees of division in favour of persons claiming to be enrolled.

On the *first* head the pursuers *pleaded*; By a solemn decision of the Court, in the case of Gordon *contra* Gordon, 12th February 1751, No 79. p. 7345, this part of its jurisdiction was fixed, and has accordingly been acknowledged, in a great variety of subsequent instances. On the proceedings of Commissioners of Supply depend, not only rights of election, but several other important civil claims, arising from valued rent; such as those respecting the dividing of commonties, the reparation of churches and manses, the maintenance of the poor, or schoolmasters salaries. Surely, then, it is neither reasonable nor expedient that wrongs committed in such particulars, by Commissioners of Supply, should be altogether irremediable, which they must be, if their actings shall not suffer the review of the Court; that of the House of Peers being of course likewise included; Lord Bankton, B. 4. Tit. 18. § 3.; Erskine, B. 1. Tit. 4. § 31.

As to the *second* head, it was *pleaded* by the pursuers; A freeholder standing on the roll, and possessing the right of voting for a representative in Parliament, a right which the law recognizes as valuable and patrimonial, is entitled to its protection, in order to prevent this right's being encroached on or diminished; and on that principle proceeds the act 16th of George II. authorising objections to freehold qualifications. The right of objecting is wisely placed in freeholders themselves, and could not properly have been otherwise conferred. Being once allowed, it must necessarily extend to the evidence of the valued rent, as much as to any other part of the claimant's qualification, and may be rendered effectual, either in the form of complaint, as authorised by statute, or, if the nature of the case should require it, by an action of reduction at common law.

Answered, with respect to the *first* point; As the Court of Session have no radical jurisdiction in the matter of cess, nor any delegated jurisdiction in it by act of Parliament, it seems to follow of consequence, that they are not empowered to review the acts or proceedings of the Commissioners of Supply.

Answered, on the *second* point; Wherever a regular and formal decree of the Commissioners of Supply, labouring under no intrinsic nullity, is produced to a meeting of freeholders, they are bound to regard it as complete evidence; and, even though, *ex facie* of the production, it appears to have proceeded on insufficient grounds, still they are not entitled to challenge it; which is evident from the spirit of the different acts of supply. The burden of taxation, and the privilege of voting as a freeholder, mutually correspond together.

Hence that evidence which is sufficient to establish the one, must be held as adequate to confer the other. Not is the jurisdiction of the freeholders in this matter more limited than it appears in various analogous cases. Thus, when charter and sasine are produced to them, containing lands amounting to the legal qualification, they are bound to enroll; nor though, by another production made at the same time, the charter should be shewn to be collusive or surreptitious, could they enter on any investigation of its merits. In the same manner are their investigations precluded in the case of a freehold created on an entailed estate, and, in general, in all those instances where the restriction flows *a non domino*. With respect, likewise, to a retour produced to evidence the old extent prior to 1681, it may be observed, that no meeting of freeholders have yet thought themselves entitled to discuss the justice of the verdict, or to refuse to it the appellation of *probatio probata*.

Freeholders, therefore, being destitute of right to challenge such decrees of the Commissioners of Supply as are not intrinsically null, any diversity in the mode of proceeding, whether in that of complaint or of reduction at common law, can have no influence on their title; though, indeed, there is this difference in the matter, that the former is an action authorised by statute, whereas the latter is altogether unwarranted. For there is no such idea known in this country, as an action at common law for the trial of a freehold qualification.

THE LORDS “repelled the objections to the competency of the action of reduction, and also to the pursuers title to insist therein; and found the *ex facie* grounds of challenge competent to be tried in the complaint.”

Act. *Ilay Campbell*.

Alt. *Lord Advocate*.

Clerk, *Tait*.

The decision in this cause, upon the preliminary point, regulated the determination of a similar question judged of by the Court, between Earl Fife and the Duke of Gordon, June 16. 1774, which follows.

Fol. Dic. v. 3. p. 412. Fac. Col. No 110. p. 294.

1774. June 16.

JAMES EARL FIFE, Mr ARTHUR DUFF of Orton, Advocate, and Captain DUNCAN URQUHART of Burdsyards, *against* ALEXANDER DUKE of GORDON, ALEXANDER DUNBAR of Thunderton, and Others.

THE lands, lordship, and barony of Duffus, stood in the original valuation roll of the county of Elgin in 1667, in the parish of Duffus, under the following article:

Lord Duffus - - - - - L. 2308 5 8
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No 78.
Found in conformity with
Ross against