1787. *February* 20. WILLIAM MACDOWALL *against* THOMAS BUCHANAN.

No 40.

MR THOMAS BUCHANAN's claim to be enrolled as a freeholder in the county of Renfrew, was partly founded on the superiority of the lands of Blackburn, which were said to be a twenty-six shilling eight-penny land of old extent.

In evidence of this, a retour was produced, in which it was stated, that the deceased Robert Sempill died last vest and seised " in tota et integra dimidie-" tate viginti sex solidatarum et octo denariatarum terrarum antiqui extentus " de Blackburn, extenden. ad tredecim solidatarum et quatuor denariatarum " terrarum ejusdem.' And it was certified in the *valent* clause, ' quod prædicta " æqualis dimidietas prædictæ viginti sex solidatarum et octo denariatarum ter-" rarum de Blackburn, cum pertinent. valet nunc per annum tribus libris sex " solidis et octo denariis usualis monetæ hujus regni Scotiæ, et tempore pacis " valuit tredecim solidis et quatuor denariis monetæ prædictæ."

It was *objected* to this retour, That though it sufficiently proved one half of the lands to have been valued at 13s. 4d. it did not thence appear, that the other half was precisely of the same value.

' THE LORDS sustained the objection.'

Act. *Lord Advocate*, et alii. Alt. *Maclaurin*, et alii. Clerk, *Robertson*.

*C.* *Fol. Dic. v.* 3. *p.* 404. *Fac. Col. No* 321. *p.* 495.

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1787. *February* 20.
WALTER SCOT and ARCHIBALD TOD *against* JOHN MILLAR.

No 41.
Objected to a retour, that the lands had been valued along with the offices of coroner and mair of fee, which were now in disuse, and which, at any rate, could not give a freehold qualification. To this it was thought a sufficient answer, 1st, That in the retour no value had been put on these offices; and,

THE superiority of the lands of Ardgowan, belonging to Sir Michael Stewart, was conveyed by him to Mr John Millar; whom failing, to Mr Shaw Stewart, Sir Michael's eldest son, his heirs and assignees whatsoever; and this, with the exception of a liferent which had been formerly made over to another person. The yearly feu-duties amounted only to L. 2 : 14 : 8¼ Sterling.

In virtue of this conveyance, Mr Millar was enrolled among the freeholders of the county of Renfrew, as fiar of the superiority of the above mentioned lands, to vote in the absence of the liferenter.

In a complaint preferred in the name of Walter Scott and Archibald Tod, on occasion of these proceedings, it was

*Pleaded*, It is now held, That a qualification founded on a liferent of superiority is nominal and fraudulent, when the produce of the right is so very inconsiderable as not to defray the expence of the necessary writings. A fee of superiority, of an equal extent, must certainly be judged of in the same

No 41.
2dly, That by another retour, which, though not mentioned in the claim, had been produced in the freeholders' court, it had been certified, "Quod dicta officia coronatoris et maris feodi, &c. nunc valent per annum debito exercendo sui servitii, et tantum valuerunt tempore pacis."

manner. The conveyance in perpetuity of a right which is of no value, cannot be distinguished, in point of nominality, from a grant of the same right to be held during the lifetime of the grantee. In truth, the fee in the present case is, if possible, more nominal than the liferent; for, with regard to this last, the holder may, at least during his life, recover from the vassal the annual prestations, such as they are; which the fiar, if he do not survive the liferenter, will never have an opportunity of doing.

*Answered*, There is nothing in the present case which can difference the fee of superiority held by Mr Millar from those of the same nature, which are expressly recognized by the statute of 1681, and which have ever since been held to constitute an unexceptionable freehold qualification. As to the clause of substitution in favour of Mr Shaw Stewart, it has been repeatedly determined, that this is merely of the nature of a destination, alterable by the immediate holder of the right, and of which the person favoured cannot avail himself, without becoming liable, as heir of provision, for the debts of his predecessor.

It was separately objected to this enrolment, That by the retour referred to in the claim which had been exhibited for Mr Millar, the lands had been valued along with the offices of coroner and mair of fee, which were now in disuse, and which, at any rate, could not give a freehold qualification. But to this it was thought a sufficient answer, *1mo*, That in the retour above mentioned no value had been put on these offices, the total amount of the sums in the *valent*, precisely agreeing with the value of the other articles, as specified in the descriptive clause; and, *2dly*, That, by another retour, which, though not mentioned in the claim, had been produced in the freeholders' court, it had been certified, "Quod dicta officia coronatoris et maris feodi, &c. nunc valent per annum debito exercendo sui servitii, et tantum valuerunt tempore pacis."

"THE LORDS dismissed the complaint."

Act. *Geo. Ferguson, et alii.* Alt. *Maclaurin, et alii.* Clerk, *Robertson.*

C. *Fol. Dic. v.* 3. *p.* 404. *Fac. Col. No* 317. *p.* 491.

*** In a case, Murray of Broughton against Clark, decided 14th July 1774, the question was, Whether the retour afforded sufficient evidence of the separate old extent of the lands, exclusive of the office of Bailie? In order to show that it did not, it was *maintained*, That there was no correspondence between the descriptive and *valent* clauses, without holding that the office had been extended to six merks, of which there was no evidence in the retour; therefore, the description of the lands at five merks might have been erroneous. The Court sustained the objection.—*See* Wight, p. 170.—*See* APPENDIX.