

to be 10 merks. Answered, That complaint having been made, pursuant to the act 16th Geo. II. of his being on the roll, though he had no sufficient qualification either in valuation or old extent, which was served on him, and he having neglected to put in answers or produce his titles, we ordered him to be expunged in February 1745, therefore the freeholders could not enrol him while that decret stood, which can only be set rside by reduction. This defence or objection we unanimously repelled, for we thought a reduction would have been very improper and no cause for it, and that he had no other way to be enrolled than by new application to a Michaelmas meeting, as these Gentlemen whom we expunged for not lodging their claim or not specifying their valuation had not nor cannot reduce that decret, but may apply again to the freeholders. However I might except Kames for he differed from us. Then they objected that the retour bore that the lands with an annuity out of other lands *valuerunt tempore pacis* 10 merks, and that he has no right to that annuity, and the old extent cannot now since the act 16th Geo. II. be divided. Answered, The annuity was only 13s. 4d., which never could be extended higher than that *valet seipsum*, and therefore the lands were 9 merks of old extent, and that the retour was itself a sufficient division of the extent, because it proved that one of the two subjects could not exceed 13s. 4d. Replied, The retour has made no division though it might be a rule or meith for our dividing, but we cannot now make any division, and if there were a retour of so many annuities out of different estates as should in whole amount to L.20 or 100 merks of old extent, and if one should purchase an exact tenth part of these annuities, which with the greatest certainty would be a tenth part of the old extent, that is 40 shillings or 10 merks, yet it would not entitle to a vote; and if two heirs-portioners should succeed to an estate of L.10 or L.20 old extent, yet none of them would have a vote because the old extent cannot now be divided. The complainer quoted precedents from the retour of Lennox, where particular tenements were in the descriptive clause called L.4 or L.5 lands, and in the *valen.* added them all together, yet we sustained it as so many several valuations or old extents. On the question it carried to sustain the complaint. *Pro* were Drummore, Justice-Clerk, and Shewalton, and Minto in the chair. *Con.* were Kames, Woodhall, and I. *Non liquet* were Strichen and Kilkerran. Thereafter the respondents offered to prove, that part of the lands of Gask contained in the retour 1513 were since that time annalized and dismembered. We ordered them to give in a condescence, which they did, but altogether general, that Lord Braco, Hatton, or other Gentlemen in the county were possessed of them, without saying what were the lands dismembered, that we could not give any proof, and therefore we refused to allow any proof, 19th January. 26th June, We altered and dismissed the complaint, though I had altered my opinion, and nothing new in the cause. *Pro* were Kilkerran, Kames, Woodhall, Shewalton, and President. *Con.* were Milton, Minto, Drummore, and I. *Non liquet* Strichen, Justice-Clerk, Auchinleck.

No. 67. 1754, Feb. 6. CAMPBELL of Succoth *against* ———.

See end of Note of No. 61, &c.