

“sequently, does not hold the estate for his own use and benefit.” And to apply this to the present case, it may be true that Mr Burnet’s estate affords him little rent or profit; but then it is likewise true, that he enjoys all the rents and profits which arise out of that estate, and that he is not bound to account for these rents and profits to any one, nor stands under any obligation to reconvey the estate. So that it cannot be qualified in terms of the statute, that his title is nominal or fictitious; though it may be true, that the principal or only intendment of the transaction was to entitle him to a vote.

“THE LORDS first repelled, and afterwards sustained, the objection.”

*Rem. Dec. v. 2. No. 75. p. 116.*

No 135.

1746. July 30.

FREEHOLDERS OF DUMFRIES-SHIRE *against* FERGUSON of Craigdarroch.

FERGUSON of Craigdarroch stood on the roll of freeholders of Dumfries, as being superior of the two-and-a-half merk land of Dunreggan.

*Objected*, That William Fergusson of Craigdarroch had, *anno* 1627, disposed these lands, to be held of himself feu for 16 merks Scots, for which feu-duty he, at the same time, granted a perpetual discharge, obliging himself to grant termly discharges as it fell due, if needful; so that he was only nominally superior.

*Answered*, That he retained still right to the other casualties of superiority.

*Observed* on the Bench, That this right could not be at that time created fictitiously to give a vote, but the intent was plain; the lands holding ward, could not be feued out, but at a competent avail; and, therefore, to salve this, a discharge was granted of the feu-duty contained in the charter.

THE LORDS repelled the objection.

*Fol. Dic. v. 3. p. 417. D. Falconer, v. 1. No. 138. p. 173.*

No 136.

A superior, although he had granted a perpetual discharge of the feu-duty, found entitled to vote.

1755. January 9.

THOMAS FORRESTER of Dunnovan, and Other FREEHOLDERS of Stirlingshire, *against* ANDREW FLETCHER, Esq; Younger of Salton, Lieutenant JAMES CAMPBELL, and DAVID GOURLY of Keppdarroch.

ANDREW FLETCHER, Younger of Salton, Lieutenant James Campbell, and David Gourly, were, at the meeting for electing a Member to serve in Parliament for the county of Stirling, on the 17th of May 1754, enrolled in the roll of freeholders.

No 137.

A right of superiority of lands found to entitle

No 137.  
to a vote,  
though the  
charter con-  
tained an obli-  
gation to re-  
dispone the  
lands.

Thomas Forrester of Dunnovan, and other freeholders, complained to the Court of Session, and *objected*, That these three Gentlemen ought not to have been enrolled; because the lands, under which they claimed right to vote, had lately been disposed to them by Sir James Livingstone and James Campbell of Ardkinglas; and the dispositions from Sir James Livingstone and James Campbell, in favour of the said three Gentlemen, and the charters and sasines following thereon, contained a proviso, that, so soon as they had completed their titles to the lands, as immediate vassals to the Crown, they should re-dispose the property of the lands, irredeemably, in favour of their immediate authors, the said Sir James Livingstone in liferent, and the said James Campbell, his heirs, &c. in fee, who were to hold the lands of the said three Gentlemen for a small elusory feu-duty, and all the casualties of superiority to be taxed to small elusory sums; and, therefore, it was evident their titles to the lands were nominal and fictitious, created only with a view to entitle to vote, contrary to the act 7<sup>mo</sup> Geo. II. As the law presently stands, a right of superiority entitles to a vote; but where that superiority is, as in the present case, created on purpose to entitle to a vote, under an obligation of immediately re-disposing the property, and taxing the casualties of superiority to small elusory sums, so that the superiority can be of no value whatever; in such a case, the right falls under both the words and meaning of the foresaid statute; and, agreeable to this, the Lords decided, Freeholders of Kincardineshire against Burnet, Younger of Crigie, No 135. p. 8753.

*Answered* for the defenders, That the objection made to their qualifications to vote, when duly attended to, resolved into this, that a right of superiority did not entitle to vote, which cannot be maintained; as, by law, all the Crown's vassals, who have lands valued at L. 400, or upwards, are entitled to vote, without regarding whether these vassals have the *dominium utile*, or only the *dominium directum*, of the lands; and, therefore, the act 7<sup>mo</sup> Geo. II. was never meant to strike against such qualifications; and the taxing the casualties does not hurt their right to vote; as a superior may lawfully tax, or even discharge, the casualties of superiority.

“THE LORDS repelled the objections made to the respondents' qualifications; and found them sufficiently entitled to continue on the roll of freeholders for the county of Stirling; and dismissed the complaint.”

Act. *J. Dundas, Bruce, et Cockburn.*

Alt. *Lockhart et J. Grant.*

Clerk, *Forbes.*

*B.*

*Fal. Dic. v. 3. p. 417. Fac. Col. No. 124. p. 184.*