

No 8. view in purchasing the right under which he claims, was to entitle him to the valuable privilege of voting for a member of Parliament, unless it can also be proved, that his right is nominal and fictitious, *i. e.* not a real estate in him, but held in trust for some other person. Neither does the law make any distinction, whether a superiority yields more or less profit to the superior. If the lands were held of him, though for payment only of a blanch duty of two pennies, he is still the only vassal of the Crown in these lands, and as such entitled to a vote, if the lands be of the valuation required by law.

The *fourth* objection is equally ill founded. When the Crown, or other superior, grants a precept to assignees, this implies a consent on the part of the superior, to the grantee's disposing of the lands in whole or in part; and consequently to his assigning the charter, and precept, as relative thereto, in favour of third parties. Nor is the superior thereby prejudiced; for the whole lands, and every part thereof, are still liable in payment for the whole *reddendo*, however split among the different purchasers.

As to the *fifth* objection, The division of the valuation was made at a general meeting of the Commissioners, upon a proof adduced before their committee, reported to them. The decret of division is produced in process, and a certificate was laid before the Michaelmas meeting, of the amount of the valuation stated in the books conform thereto, which is all that is usually done. It is unnecessary to lay the proceedings of the Commissioners before the meeting: for it has been found, that the freeholders have no power to canvass or review these proceedings. Neither is it any objection, that the decret of division was not quite finished when the claim was lodged; as it was in fact finished long before the Michaelmas meeting.

'THE LORDS repelled the objections offered to the titles produced for the claimants, and ordained them to be added to the roll.' See MEMBER OF PARLIAMENT.

Act. Lockhart & Ferguson.

Alt. Lord Advocate.

I. C.

Fol. Dic. v. 3. p. 367. Fac. Col. No 212. p. 383.

* * * This case was appealed;

THE HOUSE OF LORDS, 1st December 1760, 'Ordered and adjudged, that the petition and appeal be dismissed; and that the two interlocutors therein complained of be affirmed.

No 9.
At a meeting
of free-holders,
it was
objected to a

1781. February 17. CAMPBELL against SLOAN LAURIE.

MR CAMPBELL held sundry lands under one tenure, comprehending the two-merk land of Horsecleugh, of the Earl of Dumfries, who conveyed the liferent

superiority of this pendicle to Mr Sloan Laurie, for the purpose of creating a freehold qualification.

At the meeting for electing a member of Parliament for the county of Ayr, in 1780, Mr Sloan Laurie exhibited his claim to be enrolled. It was opposed by Mr Campbell, the vassal, a freeholder; who *alleged*, that the conveyance on which it was founded, tending to an undue multiplication of superiors, was void and null, by way of exception, and without the aid of reduction or declarator; Stair, b. 2. tit. 4. § 5.; Bankton, book 2. tit. 4. § 8. February 17. 1761. Douglas of Kelhead*; that he had never recognised the claimant as his superior, and in evidence of his fixed purpose never to do so, had already commenced a suit for declaring the inefficacy of the grantor's right; so that no possession either had followed or could follow upon it.

This challenge was brought under review of the Court of Session.

Observed on the Bench; The multiplication of superiors, without the consent of the vassal, is unquestionably illegal. Still, however, a grant of superiority having that effect, may be valid, if not reduced by the vassal. It may even be secured against reduction, by the grantee's acquiring right to the superiority which remains with his author. It is therefore *jus tertii* in the freeholders to canvass this circumstance in the claimant's right.

THE LORDS repelled the objection.'

For the Objector, *Wight, Rolland.*

C.

Fac. Col. No 86. p. 142.

SECT. II.

Competent to a Defender to found upon a third party's interest, or other argument, to show there is no ground of claim.

1611. *January 31.* CADDELL *against* VAUSS.

A SHERIFF being pursued to pay the debt for which the rebel was denounced, because he being charged to take him had not obeyed, the Sheriff will have interest to reduce the horning, although the rebel concur not.

Fol. Dic. v. 1. p. 516. Haddington, MS. No 2133.

* See APPENDIX.

No 9.
claimant to be enrolled, that the titles produced, by a multiplication of superiors, were prejudicial to the vassals. This found to be *jus tertii* to the freeholders.

No 10.