

claimants on these qualifications, That as Sir John Anstruther, the vassal, paid only one penny Scots, *si petatur*, for the whole lordship, so that blench duty neither was divided, nor was divisible; and as each claimant had only an undivided share, it was an established maxim, that no person could be qualified to vote as a freeholder, without having a distinct property, and a distinct possession. THE LORDS sustained the objection.—See APPENDIX.

Fol. Dic. v. 3. p. 428.

No 193.

1781. *January 23.* JAMES FERRIER *against* The Hon. HENRY ERSKINE.

THE barony of Drumry, in the county of Dumbarton, is held blench by the Earl of Crawford, off Lord Graham, eldest son of the Duke of Montrose, for payment of eight pennies Scots, or a pair of spurs.

The superiority of the forty-shilling land of Cloverhill, part of that barony, was conveyed by Lord Graham to Mr Erskine, with an assignation to the rents and casualties, and with powers to Mr Erskine to enter and receive vassals, &c. Upon these lands Mr Erskine was enrolled as a freeholder in the county of Dumbarton.

In a complaint against this enrolment, in the name of Mr Ferrier, it was *maintained*, That the blench duties, payable by Lord Crawford the vassal, for the whole barony, were not divided; and that Mr Erskine, therefore, had not a separate possession of the lands upon which he was enrolled.

Answered for Mr Erskine, In blench holdings, the duty, payable by the vassal, is merely an acknowledgement. As this acknowledgment is incapable of division, when a partition of the superiority takes place, the vassal must perform it to each superior. The vassal may object to the multiplication of superiors; but it is *jus tertii* to the freeholders.

Observed on the Bench, The superiority of a tenement holding blench cannot be divided. A blast of a horn, a rose, a pair of spurs, cannot be delivered in parts. When a part of a superiority of this nature is disposed, no possession can be attained on it. A qualification founded thereon is purely nominal and fictitious; and Mr Erskine's enrolment, on this account, was unwarrantable.

“THE LORDS found, that the freeholders did wrong in admitting Mr Erskine to the roll,” &c.

For Mr Erskine, *David Grane.*

Alt. Craig.

Fol. Dic. v. 3. p. 428. Fac. Col. No 21. p. 42.

* * * This case was appealed.

THE HOUSE OF LORDS, 17th April 1782, “ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutor complained of reversed; and it is declared, that the appellant was entitled, in virtue of his titles, to be enrolled on the roll of freeholders for the county of Dumbarton.”

No 194.

Found in conformity with Ferguson against Montgomery, *supra*, but reversed upon appeal.