

1787. February 20. JOHN CAMPBELL, and Others, *against* JOHN M'DOWALL.

THE meeting of Commissioners of Supply that ascertained the valued rent of Mr M'Dowall's lands, in virtue of which he was enrolled as a freeholder in the county of Renfrew, had been held in consequence of an adjournment made at a previous meeting, where, of *five* Commissioners present, only *one* had taken the oaths to government.

A complaint having been, on this ground, preferred by John Campbell and others, freeholders in the county, against this enrolment, Mr M'Dowall

Pleaded; By the annual statutes respecting the land-tax, or supply, a failure on the part of the Commissioners to take the oaths to government has not been made an essential objection to their proceedings. It only subjects them to certain pecuniary penalties. Nor would such an objection, although founded on the statutes, be fatal to the valuation of the respondent's lands. As no precise number of Commissioners is required to constitute a meeting, a decree pronounced even by *one* Commissioner duly qualified must, if intrinsically just, be quite unexceptionable.

Answered; As the Commissioners of Supply are required, before any proceedings are held, to take the oaths to government, this must be considered as a condition annexed to their appointment; otherwise, indeed, disaffected persons might intrude into this office. So accordingly it was expressly found, 22d Feb. 1751, Sutherland of Swinzie *contra* Sutherland of Langwell, No 5. p. 2436.

The other branch of the argument used in support of the proceedings in question, seems to be equally ill founded. The statutes make mention of a majority of the Commissioners, which evidently implies that the attendance of more than one Commissioner is necessary; and the practice of requiring the presence of *five* Commissioners, in those instances in which the Court of Session has interposed to authorise a meeting, shews in the clearest manner the opinion entertained on this head. Earl of Panmure and others *contra* The Commissioners of Supply in the county of Forfar, No 90. p. 8675.; Duke of Gordon *contra* The Commissioners of Supply of Banff, No 379. p. 7674.; Brown *contra* Hamilton, 6th December 1780, No 95. p. 8677.

THE LORDS were unanimously of opinion, That the Commissioners neglecting to take the oaths, was not a nullity in the proceedings; and that the case of Sutherland, in 1751, was erroneously decided. They also seemed to think that the presence of *five* Commissioners was not necessary, no such number having been specified in the statutes. It was farther observed, that as the decree of division under challenge had been pronounced at the meeting of Commissioners duly qualified, the circumstance of its being held in pursuance of an adjournment, directed by a meeting at which the legal number of Commissioners was not present, could not afford a relevant objection.

No 82.

An objection to a decree of division of the valued rent pronounced at a meeting held in consequence of an adjournment made at a previous meeting, where, of five commissioners present, only one had taken the oaths, was repelled.

No 82.

As, however, posterior to the decret in question, an act of indemnity had passed, by which the proceedings of persons acting in offices of public trust, without taking the required oaths had been ratified, it was unnecessary to determine the case on any of the grounds which had been insisted on by the parties.

Alt. *Honyman et alii.*Alt. *Wight et alii.*Clerk, *Robertson.*

C.

*Fol. Dic. v. 3. p. 412. Fac. Col. No 322. p. 495.*1787. *February 20.*WILLIAM CUNNINGHAM *against* Sir WILLIAM MAXWELL, Baronet.

No 83.

Sub-division of the valued rent of a barony, made in opposition to the old valuation-roll of the county, inept.

By the general valuation of the lands in the county of Renfrew, made up in 1654, and transmitted in 1709 to the Court of Exchequer, the lands of Bootston, part of the old estate of Craigends, were separately valued at L. 25 Scots.

In the year 1781, the valuation of a part of this estate, including the lands of Bootston, was sub-divided by the Commissioners of Supply, when, instead of adhering to the value formerly put on this parcel, they rated it at L. 34.

William Cunningham having appealed to this decret of division for ascertaining the valued rent of the lands in virtue of which he claimed to be enrolled as a freeholder, the freeholders refused to admit him.

After advising a petition and complaint for Mr Cunningham, with answers for Sir William Maxwell,

“ THE LORDS dismissed the complaint.”

Act. *Geo. Fergusson et alii.*Alt. *Wight et alii.*Clerk, *Robertson.*

C.

Fol. Dic. v. 3. p. 412. Fac. Col. No 323. p. 497.

S E C T. VI.

Who may act as Commissioners of Supply.—Time of their meeting.—Consequences of their refusing to meet or divide.

1729. *January 1.*SINCLAIR of Freswick *against* DEAN of GUILD of Wick, and BAILIES of Thurso.

No 84.

IN an action against the Dean of Guild of Wick and Bailies of Thurso, as liable to the penalty of L. 20, for having acted as Commissioners of Supply in