

uplifting feu-duties or casualties ; but if the vassal possessed upon a right derived from the superior or any of his authors, then his possession was, in the construction of the law, accounted the possession of the superior, in the same manner as a master possesses by a tenant to whom he has given a tack, though he uplifts no rents from him.

But what made the difficulty in this case was, that the vassal had taken a charter from the Crown, and had possessed the lands for several years without any challenge from the subject-superior : The question was, Whether his possession was by this means inverted, and whether or no the Crown was not to be considered in possession of the lands by its vassal, and not the subject-superior ? And the Lords thought not, and that the subject-superior still continued in possession, notwithstanding of this clandestine right taken from another superior.

Lord Elchies said, that, in a competition with a third party about this right of superiority, the years during which the vassal possessed upon the clandestine right from the wrong superior, would be imputed into the prescription of forty years, provided only that the vassal did not possess so long upon the new right as that the old was lost by prescription.

1754. June 19. LORD ADAM GORDON *against* GARDEN and GRANT.

IN this case it was OBJECTED to the division of a valuation, that the dividend or valuation to be divided was part of a *cumulo* valuation, which *cumulo* valuation was, in the year 1733, divided, and some part of it allotted to the lands of Pitfichie ; but this was done, not by a general meeting of the Commissioners of Supply, upon a proof taken, but by a private meeting, upon consent of parties.

To which it was ANSWERED,—That this division had been held to be a good division ever since it was made ; that the lands of Pitfichie had stood upon the cess-books as they were then valued, and the proprietor of them had always voted ; and if the valuation of these lands was rightly fixed, then the remainder of the *cumulo* valuation, which was the subject of the present division, is also rightly fixed.

To which it was REPLIED,—That standing upon the cess-book for any tract of years, and paying cess, will presume a regular division of the valuation, though none such appear ; but where the division appears, and is plainly irregular, then that presumption must cease : And this the Lords found, upon a division of six to five ; *dissent*. Kaimes *et* Drummore, who thought that a division of valuation by consent was a proper division, unless the objector would undertake to show that it was unfairly made.

*2do*, It was OBJECTED in this case, That the real rent, which was the rule for the division, was rated too high, in respect that the feu-duty payable for the lands holding of the Crown was not deduced, which ought to have been deduced, not being a subject of taxation, and which in fact never was taxed, as not belonging to the vassal but to the superior : And this objection the Lords unanimously sustained.