

shilling land of old extent, holden of the King. It is of no consequence what duty or profit the superior receives out of the lands, or whether it is higher or lower than the *reddendo* which he himself pays to the Crown. If the Crown's vassal should pay L. 100 of feu-duty to the King, and should feu these lands to be holden blanch of himself, his freehold-qualification would be just as good as if, *vice versa*, he held it blanch of the Crown, and had disposed them to be holden feu of himself; 9th January 1755, Forester of Dunoven against Andrew Fletcher, *infra, b. t.*

No 18.

*Observed* on the Bench, That this was the strongest intance that had ever occurred of a title purely nominal, and which conveyed no real interest in land; but it had been decided in other cases, that no regard was to be had to the value of the estate, provided the claimant was really and truly vested in the right, such as it was.

“ THE LORDS repelled the objection.”

Act. Agnew, Walter Stewart, Lockhart,  
Ferguson, Advocatus.

Alt. Garden, Da. Dalrymple,  
Clerk, Pringle.

J. C.

Fol. Dic. v. 3. p. 403. Fac. Col. No 51. p. 118.

\* \* \* This case was appealed :

The HOUSE OF LORDS, April 1st 1762, ORDERED and ADJUDGED, that the said interlocutor of the 10th February 1761 be, and the same is hereby affirmed; and it is further Ordered and Adjudged, that the said interlocutors of the 28th July 1761 and 2d February last, be, and the same are hereby reversed, and that the appellants be added to the roll of freeholders for the shire of Wigton, pursuant to the act of Parliament of the 16th year of his late Majesty.

1761. July 29.

PATRICK MACKIE of Barmore, *against* SIR WILLIAM MAXWELL of Monreith,  
and other Freeholders of the county of Wigton.

PATRICK MACKIE of Barmore having claimed to be admitted upon the roll of freeholders of the county of Wigton, at the general election upon the 23d of April 1761, he, with that view, produced a charter under the Great Seal, in his favour, of the lands of Barhapple, Kenmuir, and Barbuny, together with several other lands therein mentioned, dated 12th February 1740, with an instrument of sasine following thereupon, dated the 1st, and registered the 12th of March thereafter; and an extract retour of Sir Robert M'Lellan of Bombie, as heir in special of Thomas M'Lellan of Bombie his father, dated 27th October 1624, whereby the said lands of Kenmuir, Barhapple, and Barbuny, were

No 19.

The objection again repelled, that the principal retour did not appear, but only an extract from Chancery.

No 19.

each of them retoured to be a one merk-land, extending in whole to three merk-lands of old extent distinct from the feu-duties.

Sir William Maxwell and others of the freeholders *objected* to this claim, *1mo*, That the claimant who had been formerly enrolled upon the same lands, was expunged from the roll *anno* 1747, in consequence of a decree of the Court of Session, and it was not competent to the freeholders to reverse that decree.

*2do*, That the lands contained in the claim were said in the retour to hold of William Gordon of Craichlaw; and therefore the said retour could afford no proper evidence of the old extent.

*3tio*, That the pretended extract of the said retour produced, could not be regarded, in respect that there was no such retour in Chancery; and that the extract was taken only from a copy-book, which is not sufficient; the act of the 16th of George the Second having enacted, that the retour itself shall be the only proper evidence of the old extent.

*Answered* for the claimant; *1mo*, That he was struck off the roll in 1747 for not producing a retour to shew the old extent of the lands he formerly claimed upon; but that having lately found such retour, he was entitled to be immediately enrolled, the former decree of the Court of Session notwithstanding.

*2do*, That the statutes with regard to freehold-qualifications make no distinction of retours, whether the lands hold of the King or of a subject superior; and that it had been found by the Court of Session, that a retour of lands prior to the year 1681, whether holding of the King or of a subject, was sufficient evidence of the old extent.

*3tio*, That no principal retour was to be found in Chancery preceding the year 1660, the whole having been carried off by Cromwell; but these retours appear upon record in the books of Chancery; and from that record extracts are always given, as from the principal retours, and the extract produced bears to be *vera copia principalis retornatus in cancellaria remanen*. Besides, the like objection was expressly repelled by the Court in the case of Sir James Colquhoun *contra* The Freeholders of Dunbartonshire, 5th February 1745, No 12. p. 8572.

The freeholders having refused to enrol the claimant, he preferred a petition and complaint in terms of the act of the 16th of the late King; and, upon advising this petition with answers,

“ THE LORDS ordered the complainer to be put upon the roll.”

For the Complainer, *Walter Stewart*. For the Respondents, *Da. Dalrymple*. Clerk, *Pringle*.  
A. W.

*Fol. Dic. v. 3. p. 403. Fac. Coll. No 53. p. 130.*