

1767. *January 23.*

No 21.

Two retours of different parts of the same lands, prior to the 1681, amounting together to 40 shilling, sufficient evidence of an old extent for a freehold qualification.

SIR MICHAEL MALCOLM of Lochore, *against* ALLAN RAMSAY of Kinkell.

SIR MICHAEL MALCOLM claimed to be put on the freeholders roll for the county of Kinross, upon the lands of Bins, and for instructing, that the said lands were a forty-shilling land of old extent, he produced a retour in the 1666, where one half of them was retoured as a twenty-shilling land of old extent; and he produced another retour in the 1620, which proved the other half of the same lands to be also twenty-shilling of old extent; and these, joined together, he contended, were sufficient evidence of a forty-shilling land, to entitle him to be enrolled.

It was *objected*, That it was contrary to the spirit and intention of the law to allow a forty-shilling land to be made up of different parcels: That the evidence of an old extent ought to be contained in one retour; and, upon this objection, the freeholders refused to enroll Sir Michael, who applied to the Court by a summary complaint, in terms of the act of the 16th of the late King.

'THE LORDS ordered the complainer to be added to the roll; and found him entitled to expenses.'

For Sir Michael, *Al. Wight.*For Mr Ramsay, *Alex. Lockhart.**A. E.**Fol. Dic. v. 3. p. 403. Fac. Col. No 55. p. 96.*

* * * A similar decision had been given, 17th January 1759, Blair against Freeholders of Renfrewshire. See APPENDIX.

No 22.

1767. *February 17.* SIR JOHN GORDON *against* ———.

A CERTIFICATE by one of the keepers of the records in the Lower Parliament House, that in a record of old extent made up in 1613, the lands were marked as extending to L. 8 : 8 : 2 Scots, was found not sufficient to instruct a retour. This decision was affirmed on appeal. See APPENDIX.

Fol. Dic. v. 3. p. 403.

No 23.

Evidence of the old extent. Discrepancy in the descriptive and valent clauses of the retour.

1780. *December 5.* JOHN BARNES *against* JOHN HAMILTON.

AT the Michaelmas head court of the county of Ayr, in 1780, Mr Barnes claimed to be enrolled on the four merk lands of Shaw, part of the barony of Glenmuir; and, in order to prove the old extent of these lands, produced a retour of James Earl of Queensberry, dated 20th May 1640, in which they were described as of that value.

Upon summing up the extents of the different lands composing the barony, as specified in the descriptive clause, it appeared that they did not amount to more than L. 15:3:4; whereas the *valent* stated the whole, *in cumulo*, at L. 16:6:0. From this discrepancy, it was *objected* by Mr Hamilton, That the retour could not be sustained as sufficient evidence of the old extent of the claimant's lands. This objection having been brought under the review of the Court of Session, it was

Pleaded for Mr Barns, By the uniform practice of the Court, ever since the decision in the case of the Lennox retour, about 40 years ago, a discrepancy of that sort, arising from an excess in the *valent*, has been held out to detract from the faith of the retour: For the cause of this excess must always be, either an error in calculation, or else the omission of some of the lands, or their being stated at too low a value, in the descriptive clause. In the present case, therefore, the discrepancy might, indeed, give some room to suppose that the old extent of the lands in question may have been a few shillings above four merks, but is plainly inconsistent with its having been below that value.

THE COURT repelled the objection.

Act. G. Fergusson.

Alt. Wight & Ja. Boswell.

L.

Fol. Dic. v. 3. p. 403. Fac. Col. No 1. p. 1.

1781. January 23. GENERAL FLETCHER *against* JAMES FERRIER.

At a meeting of the freeholders in the shire of Dumbarton in 1780, General Fletcher claimed to be enrolled upon certain lands, part of the Dukedom of Lennox; and, for proving their old extent, produced the retour of the special service of Charles Duke of Lennox, dated 25th April 1662.

The *valent* in this retour does not specify the separate values of the different tenements, but states the whole Dukedom to be L. 517:3:4 of old extent. To ascertain the several values, the claimant had recourse to the descriptive clause, where, to every tenement is prefixed a denomination by pounds, merks, and shillings, and the amount of the whole only falls short of the *cumulo valent* by L. 1:16:8. Upon this discrepancy it was

*Objected,** The fifth head of the brief of mortancestry is that alone in which the inquest is called upon to ascertain the old and new valuations; and their verdict on this head only is to be regarded in questions respecting freehold claims. The descriptions are the work of the conveyancer, intended merely to denote the different tenements in which the heir is desirous of being served, and origi-

* This objection was formerly over-ruled in a question respecting the same retour, quoted in the sequel; but, as it does not seem that the matter was then so fully treated, nor that any attempt was made to elide the presumptive evidence arising from the coincidence of the two clauses, by positive proof adduced from other retours, it has been thought proper to give a summary of the argument in this place.

No 24.

Found in conformity with Colquhoun against Freeholders of Dumbartonshire, No 12. p 8572.

Altho' there be a small discrepancy between the *valent* clause and the descriptive, the descriptive will be received as proof of the old extent.