

retained a division of this *cumulo* valuation, and granted a feu of the whole to separate the superiority from the property. He then obtained a charter on his own resignation, and granted wadsets of the superiority to some, and conveyances of different parts in liferent to others, and to himself in fee, the lands of which he retained the fee appearing from the division to be valued at L. 532 : 6 : 4. The freeholders struck him off the roll, in respect of this alteration of his circumstances; but the LORDS ordered him to be re-placed. See APPENDIX.

*Fol. Dic. v. 3. p. 412.*

1781. *January 17.*

Sir JOHN SCOTT of Ancrum, Bart. and PATRICK KER of Abbotrule, Esq;  
against Sir GILBERT ELLIOT of Minto, Bart.

SIR GILBERT ELLIOT, as heir apparent to his father, was enrolled a freeholder in the county of Roxburgh, in 1777, and was then chosen Member in his father's place. He at that time stood upon his whole estate, the valuation whereof was above L. 4,000 Scots. In expectation, however, of a contest at last general election, when he was again a candidate, he created nine qualifications in the usual way, and presented a claim for having his own qualification restricted to one of the nine which he had reserved, when he granted a liferent of the rest. Objections being stated and over-ruled at the meeting of freeholders, which happened both to be the Michaelmas head-court and the election day, they were brought before the Court of Session by a summary complaint.

As Sir Gilbert had still the fee of the whole estate, it was undeniable that he might continue upon the roll in that right, whatever became of his limited qualification, though he could not vote but in absence of the liferenters. From the terms, however, of his claim of restriction, it was strenuously argued, that he had in fact done what he could never rationally mean to do, viz. put it beyond his power to continue on the roll as a fiar, in case the qualification, of which he had also the liferent, should be set aside. Besides this argument, which seemed to be merely an ingenious criticism upon words, the three following objections were urged against the limited qualification.

In the *first* place, the decret of division pronounced by the Commissioners of Supply was null and void; for they had thrown together two separate *cumulo* valuations, and then made their division of the joint *cumulo*; whereas they ought to have taken the separate *cumulos* as they stood, and made a separate division upon each. The separate *cumulos* were Minto and Craigend; and, as evidence of their being separate, there was produced an extract from the Exchequer, of the original valuation-roll of the county, made up in 1680, by the Commissioners, who had powers granted for that purpose by the act of conven-

No 96.

No 97.

A party split his estate into several parcels to create votes, retaining one to himself, without obtaining a new disjunction. As it evidently appeared there was still sufficient valuation left, an objection to his vote was repelled.

No 97.

tion 1667. Besides, in Sir Gilbert's own claim for enrollment in 1747, Craigend is set forth as separately valued at L. 660. The Commissioners had, therefore, in fact, taken upon them to make a re-valuation, which was certainly beyond their powers; and what made the matter worse was, that by this mode of procedure, they had lessened the original valuation of Craigend, by at least L. 238, and encreased proportionally that of Minto, upon part of which the qualification was reserved.

In the *second* place, Sir Gilbert, since the decret of division, supposing it to be effectual, had disponed a part of his own retained qualification, without having a second division; so that he stood enrolled upon part of an undivided *cumulo*, which could never be a legal qualification. By the account given in his own claim, the whole retained qualification was over lands, the real value of which was L. 157 Sterling, of which no less than the worth of L. 44 Sterling had been disponed; and, though it was alleged that sufficient evidence was laid \* before the freeholders, to convince them, that, after making an allowance for the valuation of the part disponed, there still remained above L. 400 of valuation; yet this was supposing a power in the freeholders, which is only vested in the Commissioners of Supply; and if, in the smallest instance, the freeholders might, by a calculation of arithmetic, proportion the valued rent to the real rent, why not in every instance, and so supersede the work of the Commissioners altogether.

In the *last* place, the feu-duties of the lands retained by Sir Gilbert Elliot, are not separate from the feu-duties of those disponed away; so that he has neither a distinct property nor possession of the subject of his qualification; both which are requisite by law, and without which, it is impossible safely to take the oath of possession, required by act 7th Geo. II. c. 16.

To the *first* objection, it was *answered*; That the decret of division proceeded upon the oldest valuation-roll in the county which was extant, or any way authentic, viz. one regularly subscribed by five Commissioners in 1707, and afterwards confirmed by one in 1742. As to the roll, of which a copy is in the Exchequer, it is not so much as known in the county; nor does there appear the least evidence that it was really a re-valuation, as is supposed, in consequence of the act of convention 1667. If the oldest rolls were to be most regarded, there is a copy of one in 1643, which was probably the original from which the roll 1680 was taken; and from this one part of the objection is removed concerning the valuation of Craigend; for in it the article of L. 660 includes both Craigend and Deanfoot, and, in the last division, these two together make L. 855; so that Minto, instead of having too great a valuation, has too little, according to these old rolls. The case of Mr Elphinston No 53. p. 8649, was quoted, to show that the ordinary valuation-roll, standing upon the land-tax books, was the proper rule in all sub-divisions, where no older or more correct roll was known at the time, though perhaps such a roll really existed. In that case, the Court of Session found otherwise; but their judge-

ment was reversed by the House of Lords. With respect to the argument founded on Sir Gilbert's claim in 1777, that claim itself was erroneous. It was drawn by the man of business in Edinburgh, who, not knowing the valuation of the lands, naturally went to the Exchequer, and was misled by the copy of the roll 1680.

To the *second* objection, it was *answered*; That, before the meeting of freeholders, the whole disposed lands, excepting a very small parcel, amounting to L. 4, were re-disposed, without any infestment having been executed in favour of the disponent. But further, supposing the matter to be as it was before the re-disposition, yet the valuation of each parcel disposed or retained was fully ascertained from the very face of the Commissioner's decret of division. For that decret does not only mention the sum of the lot, with the correspondent valuation, thus, Lot 1st, real rent L. 157, valued rent L. 572 : 1 : 4, but it previously states the real rent of each article, whereof the lot is composed; Thus, Lamblairs and Plantations, real rent, L. 4; Cowpark, L. 12; Kipp's-park and inclosure, L. 28, &c.; so that, though the valued rent is only apportioned to the whole lot, yet that is not properly a *cumulo*, but only the different valuations of each particular summed up together; and *inest* in the nature and terms of the operation, that each particular, having a certain sum of real rent, must have a respective sum of valued rent. The freeholders cannot, indeed, divide valuations, but they have eyes to read, and sense to understand, a decree of division when produced; and it would have been quite ridiculous to call a meeting of Commissioners to perform an operation in the Rule of Three, when this could be done by any person acquainted with the rudiments of arithmetic, from *data* in the decret itself. The case of Sir George Suttie in 1768 was similar to the present \*. He had sold 98 acres of his estate without getting his valuation disjoined; and the same objection, as in this case, was started on his election day. The answer made and sustained was, that his *cumulo* amounted to L. 1761 : 11 : 2 Scots, so that the freeholders could not but be convinced that such a small alienation would still leave more than L. 400.

To the *third* objection, *answered*; That it proceeds entirely on a mistake; for it supposes Sir Gilbert to have merely a superiority qualification, whereas he hath both the *dominium utile* and *dominium directum* of his reserved qualification, and he neither pays nor receives feu-duty for any part of it.

“THE LORDS, having advised the petition, answers, replies, and duplies, repelled the objections, and dismissed the complaint.”

Act. D. Rae & H. Erskine.

Alt. Hay Campbell.

D.

Fol. Dic. v. 2. p. 412. Fac. Col. No 14. p. 25.

\* See APPENDIX.