No. 8.

can never be thought, that it was the intention of the act of Parliament to make a partial change of the great principle upon which the whole election laws depend, that the right of voting depends on the *dominium directum*, and not on the *dominium utile*. Such accordingly is the interpretation which has been uniformly given to this part of the clause: Wight, B. 3. p. 238; Nisbet against Hope, 23d February 1790, No. 231. p. 8855; and is implied in the 16th Geo. II. which in a great measure supersedes the regulations of the act of Queen Anne, and makes no mention of any such limitation.

The objection founded on the other clause of the statute, that Mrs. Fraser was not an heiress, but a singular successor, as to part of the superiorities, was repelled; Skene against Sandilands, January 25th 1786, No. 188. p. 8814.

The Lords, upon advising the memorials, by a great majority, repelled the objections.

It seemed to be the general opinion of the Court, that the objection was founded upon too critical an interpretation of the act of Queen Anne, which was never intended to make such a fundamental alteration upon the principles of the election law of Scotland.

For Complainer, *Ross, Campbell, jun.* Agent, *R. Dundas, W. S.* Alt. *Gillies, Mackenzie.* Agent, *K. Mackenzie, W. S.* Clerk, *Pringle.*

J. *Fac. Coll. No.* 167. *p.* 378.

1806. *March* 11. ELLIOT *against* FREEHOLDERS of SELKIRKSHIRE.

No. 9.
The eldest son of a British Peer is entitled to be enrolled among the freeholders of a county in Scotland.

THE Honourable Gilbert Elliot, the eldest son of Lord Minto, claimed to be enrolled among the Freeholders of Selkirkshire, which was (3d October 1805) refused by the meeting, upon the ground that he was the eldest son and heir-apparent of a British Peer.

Mr. Elliot complained to the Court, who (11th March 1806) determined that the Freeholders did wrong in refusing to enrol him. The case of Abercromby, 9th March 1802, No. 119. p. 8726. was considered decisive of the present.

For Complainer, *Cranstoun.* Agent, *A. Paterson.* Alt. *Colquhoun.* Agent, *Wm. Balderston*, W. S. Clerk, *Home.*

Fac. Coll. No. 245. *p.* 549.

1807. *February* 10. DUFF *against* SIR GEORGE ABERCROMBIE.

No. 10.
It is necessary, in splitting a cumul-

THE Earl of Fife was superior of the lands and estate of Straloch in the county of Banff, valued at £800 Scots. By a disposition, of this date, (13th

No. 10. valuation of 800*l.* to take a proof of the real rent of the lands, to ascertain whether each freehold amounts exactly to 400*l.*

November 1755) he disponed to the Honourable George Duff of Milltown, his third son, "all and whole, the just and equal half, called the Sunny half, "of the whole lands and estate of Straloch, comprehending the east half of "the town and lands of Over Clune, Mid Clune, Nether Clune, Burnthil- "locks, Kingsford, White-rashes, Knaps, Overtown of Straloch, Middens, "Thainshill, Overhill, Over Ardstink, and the just and equal half of the corn- "mill of the same, and the half of Nether Straloch, commonly called the "Mains of Straloch, and in the just and equal half of the towns of Ward "and Kinghorn, and the just and equal half of the superior or over corn-mill, "mill-lands, multures, knaveships of the same, with the houses, biggings," "&c. extending "to £400 Scots of valued rent, and to be called now, and "in all time coming, the lands of Easter Straloch." By another disposition, of the same date, he disponed to the Honourable Lewis Duff of Blervie, his fourth son, "all and whole the just and equal half, called Shady half," of the said lands, comprehending the west half of the same parcels of lands, extending to the same valuation, and to be called, in all time coming, the lands of Wester Straloch. Both these grants were declared redeemable by the disponer and his heirs, upon payment of £100 at Whitsunday 1765, or any Whitsunday thereafter.

At the Michaelmas Head Court 1758, claims to be enrolled as freeholders were entered, and both George and Lewis Duff were admitted upon the roll, and continued to exercise their elective franchise without challenge.

After the decision in the case of Sir W. Forbes against Macpherson in 1781, No. 150. p. 8769. objections were stated against both qualifications, and they were both struck off the roll. This judgment of the freeholders was acquiesced in.

Of this date (19th July 1795) the Earl of Fife, as the heir and representative of his father, discharged the right of redemption in favour of George Duff, his heirs and assignees; and he also (15th July 1800) executed a similar renunciation in favour of Lewis Duff.

Claims were again entered at the Michaelmas Head Court (26th September 1800) to be enrolled as freeholders, when George Duff was enrolled without objection. When Lewis Duff's claim was moved, it was then discovered, that no division of the valued rent had taken place, and accordingly, the freeholders refused to enrol. A complaint against the enrolment of George Duff (6th December 1800) was sustained in this Court, and his name ordered to be expunged from the roll.

In order to obtain a division of the valued rent, application was made by George and Lewis Duffs to the Commissioners of Supply, and their petition craved, that they should find, "1*mo*, That the petitioners are entitled to have "the *cumulo* valuation of £800 Scots, affecting the lands of Straloch, described "in the titles produced, split and divided, in terms of their said title and inter- "est in the said lands: 2*do*, To find, that as each of the petitioners is superior

No. 10.

" of one just and equal half of the said lands, so each of them is entitled to a " just and equal half of the said *cumulo* valuation: 3*tio*, To find, that in the " present case any proof of the real rents of the said lands is unnecessary, in " order to a fair and equal splitting of the valued rent thereof; and therefore, " 4*to*, To split, separate, and divide the said *cumulo* valuation of £800 Scots " into two just and equal halves, and to assign one of them, of £400 Scots, to " the Sunny half of the said estate, belonging to the petitioner George Duff, " and the other half, of equal amount, to the Shady half thereof, belonging to " the petitioner Lewis Duff; and to ordain the Collector and Clerk of Supply " to enter and charge the said estate accordingly in the cess and valuation " books of the county, so as the same might pay cess and all other public bur- " dens, according to said proportions in all time coming: or, *lastly*, And at " any rate, if the Commissioners should think that a proof of the real rents of " the said lands is still necessary, of new to allow the same to be brought, and " thereupon to separate, split, and divide the valued rent thereof, in the terms " above mentioned."

Upon this petition being moved, several objections were brought forward by the vassals in the lands, and over-ruled, and the Commissioners finally pronounced the following decree: " Having considered the original petitions of " the Honourable George Duff of Mill-town, and Lewis Duff of Blervie, for " splitting the valued rent of the lands of Straloch, title-deeds therein referred " to, objections stated by Mrs. and Mr. Ramsay of Barra, the vassals in the " said lands, answers thereto for the petitioners, and whole debate, and proce- " dure thereon, together with the renewed application of the petitioners and " whole procedure thereon, repel the objections stated against the splitting " craved by the petitioners, and find that they, as superiors of the lands and " estate of Straloch, are by law entitled to have the valued rent thereof divided " between them, conform to their respective interests therein: Find it instruct- " ed by the cess and valuation books of the county, that the said lands and " estate of Straloch, as described in the petitions, and in the petitioner's title- " deeds produced, have hitherto stood rated and charged *in cumulo* at the sum " of £800 Scots of valued rent, and have paid the cess and all other public " burdens in this county accordingly: Find it also instructed by the petitioners " title-deeds produced, that they have for upwards of forty years stood pub- " licly infeft and seised in the superiority of the said lands and estate, in just " and equal halves, the sunny or easter half belonging to the petitioner George " Duff, and the shady or west half, to the other petitioner Lewis Duff: And " find, that as their interests in the said lands, entitled to the said *cumulo* valua- " tion, are equal, any proof of the real rent payable for the said lands is in the " present particular case unnecessary, in order to the making a division of the " valued rent: Therefore the Commissioners hereby separate, split and divide " the said *cumulo* valuation of £800 Scots into two just and equal halves, and " appropriate one half thereof, being £400 Scots, to the petitioner George

No. 10. "Duff's half of the estate called Easter Straloch, and the other half, being also "£400 Scots, to the petitioner Lewis Duff's half of the estate called Wester "Straloch, and appoint the said lands and estate to pay cess, and all other pub- "lic burdens, conform to the said valuation as now split and divided, in all "time coming, and decern accordingly."

The valuation was then divided in the cess books, and George and Lewis Duff again lodged claims of enrolment, which were objected to (26th September 1806) by Sir George Abercromby, upon the principle, that neither of the claimants is superior of any distinct part of the lands on which he claims to be enrolled; and an undivided share of an estate cannot give a freehold qualification; but even if they should be considered as superiors of a distinct and separate part of the estate, the valued rent of that part can only be ascertained by a proof of its actual value, and no such proof was taken here.

The freeholders refused to enrol either of the claimants. They severally complained; and Sir George Abercromby, in support of his objections,

Pleaded: Where an estate belongs to two persons *pro indiviso*, and where the right of each extends over the whole, it is very clear, upon principle, that this cannot give a freehold qualification; and it has been so decided; Sir Michael Stewart against Pollock, 6th March 1760, No. 45. p. 8634; Wight, p. 240. But it is admitted, that no division of the lands of Straloch actually took place; nor is it very easy to do so; for this division must be made no less than eighteen or nineteen times, as each proprietor is infeft respectively in the half of every different parcel, of which the whole lands are made up. And even although a line were drawn from north to south, so as to divide the surface of every one of the fields into two halves, this might be a division equal in extent, but it may not be one equal in value till this be ascertained by actual proof. Besides, until such line be drawn by competent authority, the lands must belong to the two proprietors *pro indiviso*. At present, most certainly it cannot be held, that the two claimants hold each of them a just and equal half of the lands, not *pro indiviso*, but separately.

But, suppose that the precise extent of the superiority of the lands of Straloch belonging to each had been regularly divided, and the precise extent and exact limits of the two proprietors had been legally ascertained, the *cumulo* valuation could only have been split after a proof of the real rent of the lands thus divided, apportioning the valued rent to its share of the real rent. There is no other way in which it possibly could be fixed, that each got just the half of the valued rent. But this not being done here, even if the two properties had been divided, the valuation has not been split, and the claim therefore is quite untenable.

Answered: Each of the claimants is proprietor of a separate half of this estate; the vassal of the eastern half could only enter with the one, and the vassal of the western half with the other. The properties are not conjunct,

but exclusive. A line of division may not have been actually drawn between them; but there can be no difficulty in dividing a field or any number of fields into two halves. In half of each of their properties, then, each of the claimants is infeft. Now, to split the valuation, surely no proof of the real value could be necessary. The Commissioners of Supply are not tied down to any parlicular mode of proof, but are entitled to proceed according to the best of their judgment. The whole lands were valued at £800; and as each claimant had the half of every parcel of lands of which the whole was composed, they could not possibly err in fixing the valued rent of the halves of each of their separate parcels at £400. This surely is as just as a conjectural proof of the real rent could be. No. 10.

Sir George Abercrombie had, previous to the meeting, brought a reduction of the decree of the Commissioners, which was reported to the Court by the Lord Ordinary the same day on which the petition and complaint was advised.

The Court held that the proceedings of the Commissioners in this case did not in fact make a division of the valued rent. A division by acres and roods would not be enough, as the east half of each field might be more valuable than the west, or *vice versâ*. The lands must have been divided into two distinct parcels, of precisely equal value in respect of real yearly rent; and if one of the claimants was proprietor of one of these parcels, and the other of the other, a division of the valued rent might in this way have been made. But it was quite impossible to sustain a division as giving each just £400, which, without any division of the property, assumed the rent of the east half as equal to the rent of the west half of each part of the lands, and assigned half of the valued rent to each.

In the petition and complaint, the Court (10th February 1807) accordingly dismissed the complaint, found each liable in the statutory penalty of £30, and expenses.

And in the reduction (10th February 1807) they sustained the reasons of reduction, with expenses.

Which judgments were respectively adhered to (3d March 1807) by refusing petitions without answers.

Lord Ordinary, *Armadale.* For Complainers, *Cathcart.* Agent, *W. Inglis*, W. S.
Alt. *Monypenny.* Agent, *G. Steuart*, W. S. Clerk, *Mackenzie.*

F. *Fac. Coll. No.* 269. *p.* 604.

1807. *March* 3. SOUTAR *against* FERGUSON of PITFOUR.

No. 11.
Nominal and fictitious qualification.

AT the election for choosing a representative in Parliament for the county of Aberdeen, 24th November 1806, Stewart Soutar, factor to the Earl of Fife,