

No. 10. 1738, Dec. 6. SIR JOHN HUME *against* HIS VASSALS.

IN a question betwixt Sir John Hume of Manderston and some of his vassals, concerning the import of the clause in the act 1693, anent heritors who had right to stock and teind, and afterwards feued the stock or lands without the teinds, Sir John having pursued a reduction of a decret of sale obtained against him by these vassals, and founded his reduction on the above act, and for proving in terms thereof, produced a charter in the record, *anno* 1618, containing the lands and teinds, whereas the vassals produced no charter older than 1638, but which appeared not to be an original charter, but to have proceeded upon the former vassal's resignation; the question was, Whether it was incumbent on the vassals to produce their original charter, at least one older than that produced by Sir John Hume, or if Sir John ought to prove at what time the teinds were first feued, that it was after his charter; and the Lords were of this last opinion, and therefore found the reason of reduction not proven, 30th November 1737. But afterwards altered,—I think 6th December 1738.

No. 11. 1739, Jan. 10. THE HERITORS OF THE PARISH OF FOGO,
Competing.

IN this case, most of us agreed, that if Hutton's right to the 11 bolls teinds out of Mortonhall's lands was perpetual, then those behoved to be allocated before what we call heritable rights, that is, rights in heritors of the lands to their own teinds; but what created the great difficulty was, that the heritors' right was by the decret-arbitral declared preferable to Mortonhall's, yet it was of its own nature redeemable, being only a right in security of a sum of money, and Mortonhall, the heritor of the lands, had undoubtedly the right of reversion. But then as the redemption money, 2700 merks, was beyond the value of the subject, we considered it in effect a perpetual right, for we had no regard to the ratification and disposition obtained from Earl Home by Mortonhall, and therefore found these 11 bolls should be allocated before the heritable rights. And as to the old stipend, since this was a competition of the heritors among themselves, we found that though this was an original locality, the old stipend should be allocated according to the former use of payment; which perhaps is the first time it was decided in these, and would not hold where all the teinds were in the titular's hands, and assigned by him in payment of stipend as he pleased. On the first point we were pretty much divided, but in the last we were pretty unanimous, except Arniston alone.

No. 12. 1740, July 16. DUKE OF DOUGLAS *against* OFFICERS OF STATE.

AT last the Lords determined the difficult question on the act 1633, the rule of valuing tithes where the parsonage and vicarage are separate benefices, and neither of them ever drawn, but stock and teinds possessed by the tenants for a joint duty, and a small silver duty immemorially paid for vicarage. I thought the parson could have no benefit by the smallness of the vicarage duty, and that therefore the true value of both, separate from the stock, behoved to be proven; and though I thought the case of the heritors favourable in the eye of the law, and would have made the rent the rule, if it could have been proportioned betwixt the parsonage and vicarage according to their true worth, without regard to the small vicarage duty, yet I thought that could not be extricated, and