that they proceeded on, when they found that purchasers could be enrolled to the same effect, *viz.* that voting for the preses and clerk, was not voting at *the election. Dissent. Arniston.*

Item, The Lords found, that though the infeftment was in the third or fourth part of a tenement of lands, yet, if the lands are afterwards divided, either by the sheriff upon a brief of division, or by contract betwixt the private parties, and possession had conform, the vote is good. This is the case of coadjudgers, mentioned in the Act 1681.

1741. *June* 11. BRECHIN ELECTION PROCESS.

[Elch., No. 15, *Burgh Royal.*]

THIS cause was mentioned before, *January* 28, 1741. The defenders, after all their *no processes* were repelled, proponed improbation of the execution of the summons, upon these three grounds:—1*mo*, Because the execution bore that copies were left at the dwelling-houses of James and David Doigs, with their servants; whereas the fact is, that they have no houses of their own, but are lodgers in other people's houses. This the Lords repelled unanimously, because the house where one lodges may not improperly be called his dwelling-house, and the servants of the house, that serve him, his servants; notwithstanding it was observed, that in such executions it is ordinary to narrate the *res vere gesta, viz.* that the person against whom the execution is made, is only a lodger, and that copies were left with the servants of the house. 2*do*, The execution against Grim, younger, bears that it was at his dwelling-house, and that copies were left with his servants; whereas, upon examination, by the messenger's own evidence, it appears that the execution was at the father's house, and that copies were left with his servants, and that the son lives, *i. e.* sleeps all night, and keeps shop all day, in a house which is contiguous to the father's house, but has no communication with it, (the door in the partition wall having been shut up above a year and a half,) and has an entry to another street; and that he only boards with his father, but is in every respect forisfamiliated. The debate upon this point held longer. It was argued for the defenders, That messengers, by the statute 1540, are tied to a certain form of execution, which cannot be dispensed with without the greatest hazard to the lieges: that, by this statute, where a man cannot be personally apprehended, the execution against him is ordained to be at his *dwelling-place*, which, in the style of criminal letters of hamesucken, (where the thing is most accurately defined) is said to be *where he rises and lies down*: that in this case the son lay in a house by himself, which, though contiguous to the father's house, was no part of it. This likewise the Lords repelled; in respect that Grim was boarded in his father's house, served by his father's servants, messages left for him there, and generally understood to live there: that, before the door of communication was shut up, there would have been no doubt, and,

considering that had been only done some time before, the messenger was at least *in bona fide* to suppose that he still lived in the father's house.—*Dissent. Preside et Drummore. 3tio,* With respect to the execution against the same Grim, the defenders adduce the evidence of the two only servants who were at that time in Grim the father's house, who both depose that they got no copy from the messenger, and that he was but once in the house for a year before, and then he was alone. This evidence was the stronger, as the messenger and witnesses, in the explanatory execution, (of which we made mention January 28, 1741,) had condescended upon these two persons as those to whom they gave the copies. Neither was the execution in this particular, supported by the oaths of the witnesses taken by the pursuers as approbatory of the execution; for one of them depones that he was positive the copy was given to Margaret Forsyth, (one of the servants;) the other thinks it was rather given to a woman who was not at that time servant in the house.

But this likewise the Lords repelled, in respect that the presumption of law is for the truth of the execution, which cannot be taken away by a negative evidence, or mere *non memini*, especially, where there is no evidence of fraud or deceit intended.

1741. *June* 12. REDHOUSE *against* BAILIE of the ABBEY.

[Elch., No. 2, *Abbey;* C. Home, No. 171.]

IN this debate, likewise, a question was thrown out, Whether money could be poinded in a debtor's pocket?

The President and Elchies gave their opinion that it could.

It was also questioned, Whether debts contracted in the Abbey were privileged, so that personal diligence might be done for them, even against persons in the sanctuary. The President thought that they were.

1741. *June* 12. SIR JOHN ARNOT *against* ———.

THIS was a question about the nomination of a bellman, betwixt a burgh of barony and the baron. The bell was allowed to be the property of the burghers, purchased at their joint expense, and was employed by them as a passing bell, to intimate deaths, and summon people to funerals. This they said was a co-partnership, a company trade, which had nothing illegal in it, and with which the baron had nothing to do.

The Lords found, That the nomination of the bellman belonged to the baron,