

good majority, that in so far as the Michaelmas courts were still in force, summary application to the Court of Session was still competent. Then the question was proposed by the President, Whether the Michaelmas courts could add to the roll apparent-heirs and husbands in the right of their wives? but Arniston (for what reason I know not) moved that the first question should be, Whether new purchasers could be added? and it carried in the negative. In this case I was for the negative as I had declared the day before; and Monzie did not vote; but what seemed odd was, that Haining, who had given his vote against their having any power of alteration, now voted that they had power even to add new purchasers. The rest divided as formerly. Last of all the question was put as to the power of adding apparent-heirs and husbands? and it carried by the President's casting vote, that they could be added. Here Haining and Monzie both voted for the power, as I did according to the opinion I gave from the beginning. But something also seemed odd here. Kilkerran who voted for the power of adding new purchasers, yet because it carried in the negative voted against the power of adding heirs or husbands, as a necessary consequence of the former interlocutor. *Vide* Election of Sutherland, (No. 7.) where we found by the President's casting vote that purchasers may be added.

No. 3. 1740, Dec. 11. ELECTION OF BERWICKSHIRE.

THE Lords found there being no particular objection made to the defender continuing on the roll at the Michaelmas court, the application to this Court was incompetent,

No. 4. 1741, Feb. 3, 10. ELECTION OF DUMFRIESSHIRE.

THE Lords agreed that the Privy-Council had no power to dismember or annex counties; and 2dly, that if they had power it was not properly done, being only interponing their authority to a private contract without any word dismembering or annexing *per verba de presenti*, and therefore repelled the objection to the titles of the freeholders in the five parishes of Eskdale, as said to be in the shire of Roxburgh in virtue of the said act of Council.—10th February, The Lords refused even of consent to determine objections that had not been made at the Michaelmas meeting notwithstanding their resolution not to revise the roll except as to alterations since last Michaelmas; 2dly, They found that charters by subject superiors in 1611 on which there was a late retour 1737 bearing the old extent, were sufficient evidence. *Pro* were Drummore, Tinwald, Balmerino, Murkle, and President. *Against* it were Justice-Clerk, Minto, Leven, *et ego*. These did not vote, Strichen, Arniston, Kilkerran, Monzie.

3dly, As a consequence of the judgment given the 6th instant in the shire of Sutherland, *quoad vide* (No. 7.) finding that new votes may be enrolled, they found that persons infest though not year and day may be enrolled; 4thly, A charter in 1681 and 1631 in church-lands bearing L.4 of old extent, was found no sufficient evidence of the extent, or that these lands were extended. (See No. 17.)

No. 5. 1741, Feb. 13. ELECTION OF MEARNS.—SIR JAMES CARNEGIE
against STEUART of Inchbreck.

THE Lords found that there was no sufficient warrant for dividing the property lands reserved to Inchbreck, and the superiority lands disposed to Dr Stuart and Skene, and

therefore found the division null, and that he could not be continued on the roll on that right;—found it competent to make objections at a Michaelmas court against a person formerly enrolled, which objection was not overruled by a former head court. 13th February The Lords adhered, agreeably to act 25th, Parl. 6. James II.

No. 6. 1741, Feb. 19. ELECTION OF CAITHNESS.

THE Lords found no necessity to call the persons enrolled by this Michaelmas meeting, in the same way as they had found in 1734 in the case of the Freeholders of Linlithgow, and therefore repelled the no-processes. *Renit.* President.

No. 7. 1741, Feb. 17. CASE OF SUTHERLANDSHIRE.

UPON a petition of freeholders, complaining of the last Michaelmas court, to whom they intimated to compear before the Court of Session to November, but no diet appointed by the meeting for that end, as the act 1681 directs, the Lords had appointed parties concerned to be served with copies; but as that would take a long time, because of the distance, the petitioners reclaimed, and insisted that the parties should be held as in Court, because of the intimation, and that the meeting should have appointed a diet. This had been appointed to be intimated in common form, though we could expect no answer from parties not summoned, nor perhaps inclined to sist themselves, and therefore came now (5th December 1740) to be advised without answers, when the Lords adhered, though several were for altering.

20th January,—Rogart, claiming in the right of his wife, an heiress, who is now dead, not infest, whereby he can have no courtesy,—the Lords found he ought not to have been continued on the roll;—sustained also the objection to John Gordon of , whose title was, that he was married to a liferentrix, notwithstanding he was said to have been enrolled at an election 1722, but this was repelled, because there was no evidence of it, but a notorial copy. But many of us thought the answer not good, and thought though the Michaelmas head court could not alter, yet they might appoint a day for their appearing before this Court. 3dly, They repelled the objection against Sir John Gordon, that he was declared infamous, &c. in the terms of the act 1621. Several differed, and thought the objection good; others of us (*inter quos ego*) were not clear, and did not vote. 4thly, Sustained the objection to Robert Gordon of , that he was not in possession, but the lands sequestrated, as the estate of Gray of Skibo. Most of those who spoke were of opinion, that a debtor, whose estate is sequestrated for payment of his creditors, may notwithstanding vote. 5thly, Repelled the objection to Murray of Pulrossie, who was an heir of a tailzied estate served, but not infest, and renounced the rents of the estate to the next heir, reserving L.500 out of the readiest of them. Adhered to the 3d and 5th, February 17th, without answers. 21st January, Found that Adam Gordon Delquholly ought not to be reponed to the roll, since he does not now produce any infestment, though the Court was of opinion in the general, that a Michaelmas court ought not to turn freeholders out of the roll upon any objection to their titles, without giving them an opportunity of producing them; but here he did not even affirm in the head court that he was infest, but gave a shifting answer.