No. 46. 1748, Jan. 26, Feb. 3. EARL OF EGLINTON'S CLAIM OF SHERIFFSHIP OF RENFREW AND REGALITY OF PAISLEY.

BRYCE BLAIR, the Earl's author, having right to the heritable Sheriffships of Renfrew and Bailiary of the Regality of Paisley, resigned them in the Crown's hands, for which he was to get 3000 acres of land in Ireland; but the King being unable to perform, he gave back to Earl of Eglinton as then having right to these jurisdictions, the jurisdictions themselves, but redeemable by the King for L.5000 sterling with interest, upon which he has possessed from 1642 till now, and he claimed the L.5000 and interest. The right to the jurisdiction was admitted, but Lord Advocate insisted, that under the late statute the Earl could claim no more than what should be found the true and just value of these jurisdictions, not exceeding L.5000, because a redeemable right cannot be of more value than if it was not redeemable; that the claim supposes a part of a right better than the whole; that the King might when he pleased renounce the right of redemption, which could not make the claimant's right of less value than it was before;—and we accordingly so found. In this same case, Lord Dundonald, as deriving right from Earl of Abercorn, claimed the Lordship of Regality itself; and indeed there was a right to it of the date of the annexation 1587, and the right excepted from it, and renewed again in 1591, and agreeably to it in 1607 Semple's heir was entered by Abercorn by a precept of *clare constat*, but the act 1633 supervening, the charter 1642 was granted by the Crown to Bryce Blair; only he gave a bond to the Treasury that it should not prejudge Abercorn's right, which seemed to respect the *exitus curiæ*, and since that time Abercorn or Dundonald have had no possession; and because of the act 1633 we dismissed the claim.

No. 47. 1748, March 1. THE CASES OF URQUHART AND P. HEPBURN.

MR URQUHART, who has an estate in the shire of Cromarty, particularly the barony of Cromarty, claimed the heritable Deputy-Sheriffships over their own lands which had been granted originally by Urquharts of Cromarty heritable Sheriffs of Cromarty,—and Hepburn, as adjudger (in trust I suppose) from Sir John Gordon, entered the like claim of Deputy-Sheriffship over the estate of Invergordon; and each of them pretended to 40 years possession except as to a part of Sir John Gordon's estate, whereof the heritable Deputy-Sheriffship was granted only in 1731. Some of us thought that the Sheriffships had, *renitente jurisprudentia*, in many cases been granted heritably, and though after the act 1455, yet sustained by us if confirmed by 40 years possession; yet heritable deputations were still worse, because the Sheriff was by law answerable for his Depute, who in that case might be a woman, or an infant, and therefore incapable to exerce. But splitting shires by such deputations over parcels of it seemed inconsistent with the nature of the office, the Sheriff-Court being the King's Court, and the Sheriffs and their Deputies the King's Judges over the whole province, and his Minister for executing the laws and the King's orders over the whole, which such a Deputy could not do; that none of these Deputies could have jurisdiction outwith his own bounds, and the Sheriff could not create another Depute within the bounds of the heritable Sheriffship, so that there never could be one Depute having jurisdiction over all the county,

and therefore could not exercise any act of jurisdiction, nor any other part of his office that behoved to be over the whole county, and therefore could not hold any Sheriff Head-Courts, &c. nor could they commit one to the county prison if out without the bounds of their jurisdiction, and they could not lawfully have any other prison; and whereas it was said, that the Sheriff-principal could hold Head-Courts, what would be the remedy if the Sheriff-principal was absent, either in the King's service or otherwise, or if a woman or infant were Sheriff-principal, and so incapable to act, and if positive prescription were proved the act 1617 was very strong, but as to a part of this there could be no prescription. However, upon the vote it carried to sustain these jurisdictions. For it were Drummore, Haining, Dun, and Shewalton. Against it were Minto, Monzie, Tinwald, and I, in the chair; but it came not to my vote. Arniston declined himself. Strichen and Murkle did not vote.

No. 48. 1749, Jan. 10. JOHN COUTTS and Co. *against* RAMSAY, &c.

COUTTS presented a bill of advocation of a process before the Conservator's Court at Campvere which on report we refused as incompetent. He reclaimed, and we this day refused without answers. It is not very clear indeed whether they have any remedy or what is the remedy, but we were clear that we had no jurisdiction.

No. 49. 1749, Jan. 11. CASE OF SIR J. HOUSTON AND MR G. BROWN.

YESTERDAY in the middle of a cause a sort of complaint came from one of the Outer-House clerks to Minto, who had been a little before examining Sir John Houston in a cause at his Lady's instance, and had left it to the clerk and lawyers to finish when he was called to the Inner-House; that after he was gone, upon a question being proposed by Mr Brown, Sir John had called him "an impertinent or insignificant puppy," and that a squabble had like to have ensued had they not been separated. The President, upon being shown this, immediately hushed the House, and we sent two macers with a signed warrant to search for and apprehend Sir John and bring him before the Court, and in a very little time they found and brought him. The House was again hushed, and first Sir John and next Mr Brown separately examined. The fact was, that Mr Brown said to Mr T. Hay, Sir John's lawyer, "that with his leave he would put a question to Sir John;" and the question being put, Mr Hay said "he thought it already answered by a written condescendence that he had signed for Sir John" which he showed him; but Brown after reading thought the question not answered, and therefore desired to have it answered, on which Sir John turning to Mr Hay said, "Am I obliged to answer every question that an impertinent (or as some called it insignificant) puppy will put to me?" whereupon Brown took Sir John by the nose and squeezed it about, and then they were both seized and separated by those present. As the day was far spent before these examinations were finished, we committed Sir John to the tolbooth of Edinburgh and Brown to the Canongate tolbooth till this day, and ordered the persons present to be cited to attend. And this day we again hushed the House and examined the witnesses, none being allowed to remain but these two, and a friend or two with Sir John. The fact came out as above: Only one