No. 47. 1747, June 24. COLONEL STEWART'S CASE,—WIGTONSHIRE.

COLONEL STEWART was infeft on his father, Earl Galloway, and Lord Garlies' resignation, and Captain Hay on his brother Sir Robert Hay's resignation, in fee and liferent in their respective lands, excluding their heirs and assignees, and failing them by decease to return to the granters; and in Colonel Stewart's rights he is enabled to burden the lands with L.400 sterling. The objection was, that this was no right of fee, because they did not descend to heirs or assignees, nor could not be sustained as a liferent, because it was but a nominal and fictitious right created to give a vote. We repelled the objection, and sustained both votes.

No. 48. 1747, July 9. ELECTION OF TWEDDALE,—DICKSON OF KILBUCHO'S CASE.

LANDS valued at L.5 in 1659, the one half was feued and confirmed by the Crown, and they possessed *pro diviso* since that time, and it was said there was a legal division without telling us how, but it was not by a retour.—Dickson of Kilbucho got right to one-half from his father, to which Captain Murray, &c. objected on the act 1743. And we found that Kilbucho had no sufficient title.

No. 49, 1747, NOV. 10. KERR *against* REDPATH, &c.

THE case of Redpath was a retour in 1666, retouring both old and new extent 7 merks and 4 (40)d. and the feu-duty 7 merks and 40d.; and Newbigging's case was the same, but that in the feu-duty there were 2s. *in augmentationem rentalis;* the same with Cleland's case, 4th June 1745, and 14th June 1746; and with M'Cara's case, 24th June 1747; and we gave the same judgment. Primrose's case is, that he is by his mother one of three heirs-portioners in a 40 shilling land, and has a disposition from the last vassal, on which he is infeft base. We sustained the objection, *renitente* Arniston in the whole points; and several others voted for the interlocutor in the two first cases only, as they declared, because of the former judgment.

No. 50. 1748, June 7. HOME CAMPBELL *against* SIR JOHN HOME.

FOUND it not competent to the freeholders to judge of the objection against Sir John Home, because the alteration alleged happened before 1st December 1743. 2dly, We found it no good objection againt a proprietor in possession upon a proper title, that there is an expired adjudication and infeftment upon it without possession. We found it unanimously; and by a majority found expenses due, for there was no place here for the penalty in the statute.

No. 51. 1750, June 20. SINCLAIR of Southdun *against* SUTHERLAND of Forse.

SOUTHDUN was refused by the heritors to be enrolled in 1744, and complained to us, but observing that the evidence of his valuation was not clear, did not insist, but applied

again to be enrolled in 1749, after getting the valuation of his lands properly divided, and was refused, and complained again to us; and a question occurred, Whether a person refused by one Michaelmas meeting, can on the same title be received by another? and on that point we differed. Kilkerran thought he could not, and I thought he could, but we waved the question, and joined the two complaints; and found the petitioner entitled to be enrolled. Then the defender demanded expenses, because they could not enrol after a former meeting had refused; but we found them not entitled to any expenses.

No. 52. 1751, Feb. 6. SUTHERLAND *against* SUTHERLAND.

SWINZIE complained of the freeholders of Caithness, for refusing to enrol him at Michaelmas 1749. Their chief defence was, that his lands of Risple (Reisgill) were valued *in cumulo*, and jointly with the lands of Langwell, which hold of Breadalbane, (now of Ulbster) and had been most irregularly and iniquitously divided by a meeting of the Commissioners of Supply in June 1749, so as of L.800, at which both estates stood valued, Reisgill was by them valued at L.421. 5s. 6d. and Langwell, though of much greater real rent, was valued only at L.378. 14s. 6d.;—for setting aside which valuation a reduction apart was raised by Langwell, which came before me, and the complaint being delayed till that reduction were finished, I reported it this day. There were sundry reasons of reduction; and as the case appeared to me, the division of the valuation was very iniquitous. But as an objection was made to our power or jurisdiction to review the acts or proceedings of the Commissioners of Supply, I reported only that declinature, together with one reason of reduction which we behoved to judge, though the declinature were sustained, viz. that the persons who made the division could not act as Commissioners of Supply in 1749. As to the declinature, the pursuer insisted on our general power as supreme Judges in all civil causes; 2dly, Our power with respect to the old taxations; 3dly, A clause in the act of convention 1667 *in fine*. Answered, the valuing of lands was no civil cause at all, and the Commissioners were a commission of Parliament, appointed occasionally, or from year to year, to perform a certain office which no person has any power to do but in virtue of that commission, and is quite different from the method of levying taxations imposed by the old extent, and proportioned by the respective superiors and vassals, and the Bishops and other Clergymen, and their vassals, among themselves, without any commission of Parliament; and the act of convention 1667, in the clause referred to, is only an order to the Commissioners to bring in such part of the former taxation as was not then brought in, and adds a very necessary clause, in case any suspension of that tax had been passed, that these suspensions should be first discussed, but no suspension of Cess is allowed. As to the foresaid reason of reduction, there are two clauses in the act, one of them authorizing the persons therein named, or such of them as had qualified, or should qualify to be the Commissioners, and then after some other clauses, there follows a *proviso*, that none of them should act in execution of that act till he should first take the oaths of allegeance and abjuration, under the pain of L.20 sterling; therefore Swinzie alleged that these Commissioners had before qualified, and therefore were by the first clause appointed Commissioners; and though they did not qualify in virtue of the act 1749, their proceedings were not void, and they were only