

liable in the penalty, for the act says no more, *et ubi lex pœnam statuit lex pœna contenta est*. The Lords were divided as to the declinature. Kilkerran was clear for repelling it, because sundry other rights depended on valuations besides the Cess, not only elections to Parliament, but heritors interest in division of commonties, and others. On the other hand, President seemed to think that we had no jurisdiction, though he saw many inconveniences from finding so, and was willing, if possible, to wave deciding it; and I inclined to the same opinion, though I saw the same inconveniences. Therefore they proceeded to the other reason of reduction, and found that these Commissioners not having qualified, by taking the oaths in execution of the act 1749, were not capable to act in dividing the valuation, and sustained that reason of reduction, *me tantum renit*. and in respect of that judgment, they on the other question dismissed Swinzie's complaint, and found him liable in the penalty of L.30 sterling. 25th June, Adhered.

No. 53. 1751, Feb. 12. SIR J. GORDON *against* SIR J. GORDON, &c.

THIS was a complaint against the freeholders for refusing to admit Sir John Gordon of Invergordon on the roll of freeholders, where one of the objections was alleged errors in the Commissioners of Supply in dividing the valuation of his lands from that of the Earl of Sutherland; and here we were forced to determine the question that we so carefully avoided on the 8th in Sutherland of Swinzie's case, *supra*, viz. the objection to our jurisdiction or powers of revising or altering the proceedings and sentences of the Commissioners of Supply; and it carried to repel the objection, *me tantum renit*.—but the President, who was of the same opinion with me could not vote, having declined himself,—and Justice-Clerk was of opinion of the interlocutor but did not vote because he did not hear the debate. *Pro* were Minto, Drummore, Haining, Strichen, Shewalton,—but Murkle was *non liquet*, and I hardly knew Dun's opinion, who was in the chair. He seemed for sustaining the declinature, but thought if any man was prejudged by an unequal valuation, he might be redressed by a proper process. The complainer's procurator Mr Craigie admitted, that if a division was made without any proof, that it would be a null decret, and we had power to find so,—to which I could not agree.

No. 54. 1753, Feb. 23. COLONEL ABERCROMBY *against* J. GORDON.

THIS a Gentleman was also enrolled by the freeholders on this title: His elder brother Archibald was infeft in 1753 on a charter under the Great Seal on his father Peter Gordon's resignation in lands above L.400 valued rent, but reserving the father's liferent and power to sell, annailzie, or burden the lands, as he thought fit. Archibald is dead, and the said James his brother is his apparent-heir; and two days before James lodged with the clerk (agreeably to the act 16th Geo. II.) his claim to be enrolled. Peter the father assigned to him his liferent and renounced his reserved faculty, and he claimed to be enrolled as apparent-heir now that these faculties were renounced. The objection was, that he could not be enrolled as apparent-heir because his brother had no title to be enrolled, his right being quite precarious and nominal, and the renunciation, however it might entitle him to be enrolled were he infeft, yet it could not entitle him to be enrolled as apparent-heir. Answered, Even Archibald was entitled to be enrolled, notwithstanding the reserved