

1754. *January 5.*

INTER EOSDEM.

A FREEHOLDER in this county had his lands valued in a cess-book of the county, as old as the year 1691, at the rate of L.473, and had paid cess, he and his predecessors, accordingly, from the year 1691 down to this day. It was objected that the book 1691 was of no authority, not being anyways authenticated, and by a prior book in the year 1687, it appeared that these lands were jointly valued *in cumulo* with other lands, nor was there any evidence of their ever being legally divided; and as to the use of paying cess for so long a time, it was decided in a case last summer, from the county of Caithness, that the use of paying cess for forty-five years did not ascertain a man's valuation.

The Lords nevertheless repelled the objection unanimously. Those of them that were for the Caithness decision made this distinction betwixt the two cases,—that in the Caithness case the freeholder, not content with his use of payment of cess, had attempted a division of the valuation before the commissioners of supply, thereby giving up his ancient use of payment, to which the Lords could not afterwards let him have recourse, upon relevant objections being made to the new division.

1754. *January 10.*

INTER EOSDEM.

THE question here was, Whether a wadset of a feu-superiority, bearing not only a clause of redemption, but a clause of resignation of the money for which the superiority was wadset, gave a right to vote? It was objected that this was no proper wadset, because, *1mo*, That a feu-duty being precisely the annualrent of the wadset sums, and being a certain rent that could not fail, there was here no hazard, or no chance of either profit or loss to the wadsetter.

To which it was ANSWERED, That there was some risk more or less in the case, as the risk of total sterility, or of the lands being overblown with sand, which happened to the whole parish of Cubin, in the shire of Murray; and it was not the greater or less hazard that made a wadset proper or improper, but it was the wadsetter's accepting of the fruits for the annualrents of his money. *2do*, Because there was here absolute warrandice not only against all past burthens and impositions upon the lands, but also all burthens and impositions in time to come, and particularly future augmentations of ministers' stipends; so that in this respect the wadsetter was to run no risk.

To which it was ANSWERED by Lord Elchies,—That this was no more than the common warrandice in all sales, by which every eviction of the subject is guarded against, and an augmentation of the minister's stipend is an eviction of so much of the tithes. *3tio*, Because there was a clause in the wadset, obliging the wadsetter to account for the casualties of superiority, if any should fall during the wadset; so that, by these casualties falling, the wadset sum might have been compensated and extinguished: which is directly contrary to the nature of a proper