

cousin Gordon of Ardoch, and Cadboll, and this last never qualified; and as there is an election only every second Parliament, there has it seems been no meeting of freeholders there since the act 16th Geo. II. *anno* 1743, nor no particular day appointed in terms of that act by the Sheriff for such meeting. Last autumn a claim was regularly entered by M'Kenzie of Highfield to be enrolled, and his titles produced, and at the same time objections lodged in both his name and Cadboll's against the other four upon the roll. The Sheriff had it seems in 1743 appointed the third Tuesday of October to be the day, but had not published it as that act directs. On that day the four on the roll were in the town of Cromarty, but thought not proper to go to the place of meeting, and Cadboll came not at all to the town, and there was no Sheriff-clerk then acting, but an interim one appointed by the Sheriff; and the clerk appointed by the Keeper of the Signet had not officiated or accepted of the commission. Highfield required these clerks to go to the court, and constitute a meeting of freeholders, which they could not do, and I suppose were not inclined, for Leonard Urquhart, one of the freeholders, was the person that got the commission to be clerk; and no meeting of freeholders being held, Highfield lodged a summary complaint in terms of the act 16th Geo. which being served on 30 days in common form, and answers put in, and this day heard; we all agreed that it was a great abuse; but the question was, Whether we could give any relief? We all agreed that it was not within the act 16th Geo. II. and therefore not competent in this summary way. 2dly, Supposing it competent, we could neither fine or otherwise punish the freeholders for not meeting, nor order the petitioner to be put on the roll, nor expunge any of the other four, till the freeholders in a meeting first gave their judgment, or refused to give it, which was agreeable to our judgment 6th and 21st January 1742, Cunningham of Comrie against Freeholders of Perthshire, (No. 16.); but in this last Drummor seemed to differ. However, we all agreed to dismiss the complaint as incompetent.

Nos. 61, 62, 63. 1754, Jan. 3, 4, 9. MAJOR CUNNINGHAM.—CUNNINGHAM OF BALLINDALLOCH.—CAPTAIN ROBERT CUNNINGHAM.

THE freeholders having refused to enrol Major Cunningham, he complained. His case was, that having purchased lands and got a disposition with precept to be held *a me aut de me*, he was immediately infeft, and some time after executed the procuratory and took a charter of resignation, containing as usual a confirmation of his own former and all other infeftments; when he lodged his claim to be enrolled with the Sheriff-clerk, he with it lodging as his title the said charter of resignation and sasine taken on the precept contained in it, but not his former sasine; so the objection was, that confirmation of the former sasine operated *retro*; and therefore the sasine on the charter of resignation was void and null. The Court unanimously found the complaint well founded, repelled the objection, and ordered him to be enrolled.

In the same petition Cunningham of Ballindalloch complained of their refusing to enrol him.—The case was, that his lands were valued in the Collector's books at L.473, —that they were so in the book lying in the Exchequer, which was the Collector's book in 1691, and was lodged after the Union, and is the rule of taxing the composition, and there has been no different valuation of these lands since that time, and the original

valuation of this county is lost ; but the freeholders produced an old tattered book which they said was the Cess-book in 1687, but signed by nobody, and said that in that book these lands were valued jointly or *in cumulo* with other lands, and no legal division has been made. The Court 2d January pronounced the like judgment as in the former case, and ordained him to be enrolled.

9th January 1754.—In the same petition Captain Robert Cunningham, son to the Major, complained of being refused to be put on the roll. His lands were in the first roll 1691 in the Exchequer valued jointly with some other lands belonging to one Brown at L.888, and being purchased by the Major, he expedite a charter to himself in liferent and to his son in fee, and in 1739 renounced his liferent of a part but reserved the liferent of the lands now in question ; and upon a petition to two Commissioners they divided the valued rent and valued these lands at L.414, and upon that he was enrolled ; and being complained of in 1743 they passed from the complaint and he continued on the roll ; but in 1745 he or his eldest son conveyed the other part of the lands to his second son, and having made another purchase for himself, (on the title of which we have ordered him to be enrolled *ut supra*,) he renounced the liferent on which he had been enrolled in favours of his said son Captain Robert, and he claimed to be enrolled, and obtained the like certificate from two Commissioners that his valuation was L.414 ; and it was said that in all this county the tenants paid all the Cess, whereby it was well known what was the valuation of every farm, and it was said that it was by that rule that the two Commissioners divided the valuation. Mr Craigie for the complainers agreed that the rule established by us in the case Colonel Abercromby against Leslie February 1753, that the division must be by a general meeting called by the Convener, and the rule of division must be the real rent, was indeed agreeable to law where an original valuation was extant ; but said that it might be done by two Commissioners when there was no original valuation, and where the tenants paid the Cess, that might be the rule. However the Court dismissed the complaint and sustained the objection against enrolling, *renit.* Drummore and Strichen. (Milton gave no opinion being in the chair.) We thought that where there was a legal valuation or legal division it was not lost by losing the paper, if there was sufficient evidence of it, and the Collector's book so old as 1691 was presumed the legal roll, and that the valuations therein were presumed legally made unless elided by contrary proof or stronger presumptions ;—that if these lands were afterwards to be divided, the valuation behoved to be divided as the law directs, for till such division nobody could know what proportion fell to each tenement ; that if these lands, which were called Sea-beggs, had been before lawfully divided or had been separately valued in any of the Collectors books before 1691, though in the 1691 they were again joined in one article, (which was a case stated by Mr Craigie,) the next Collector might by his own authority divide them again without the authority of any Commissioners ; but if no former division appeared two Commissioners had no more power to make a division than the Collector had without them, and therefore as this division was by a private meeting of two Commissioners it was without authority ; and as to the rule, though the Cess paid by tenants might be a sort of meith to come at the true value of both tenements, it could never be the legal rent, because it depended on the pleasure of the master, who often farmed his own mains, and was without any authority, and quite unknown to Commissioners or even the Collector, as the tenants

always collected the Cess and paid in the Cess of the whole tenement together to him, and every farm was still liable for the Cess of the whole tenement, which could not be if that was a division;—that the Minister's stipend is often collected and paid in the same way, yet the whole tenement is still liable to the Minister.—10th January 1753, In the same complaint, Archibald Campbell, writer to the signet, complained of being refused to be admitted. He had purchased a wadset belonging to the deceased Captain Campbell, and which he had got in 1735 from Stirling of Herbertshire, partly of property lands, partly of a superiority valued L.410; and against him it was objected that a superiority could not be wadset; 2dly, That this was no superiority, for that Herbertshire had acquired to himself a claim to his vassal's property which he reserved in the wadset right, and power to feu it again, to be held of Captain Campbell; 3dly, That it was improper in so far as the reverser was bound to relieve the wadsetter of public burdens, at least of augmentations of stipends; and that if any casualties of superiority should fall, he should submit what further sum should be paid for them and pay it or allow it at redemption, which was suspended for 21 years. But the Court repelled all these objections and found it a proper wadset. It was also objected, that the valuation of the property lands was divided only by a private meeting of two Commissioners; but as that division had been afterwards approved by a general meeting, they also repelled that. The last objection was that he was not in possession of the superiority, for that Herbertshire conveyed these lands to Lady Forrester, and she to Forrester of Denovan, who is infeft under the Great Seal and in possession of the lands. This objection was superseded till the fact should be cleared; and on reclaiming bill and answers, and after mutual memorials on the fact as to possession, and after appeal entered by the respondents, and withdrawn on paying L.40 costs, we adhered, and repelled the objection to the possession and sustained the claim, 6th February.—Affirmed in Parliament.

Nos. 64. and 65. 1754, Jan. 15. GRANT *against* ABERNETHY—GORDON of Lessmore.

SIR ARCHIBALD GRANT complained that this meeting had enrolled Abernethy of Crimonmoggat as apparent-heir though he lodged no claim for being enrolled with the Sheriff-clerk as the act 16th Geo. II. directs. Mr Craigie for the respondent gave up the point; yet two of the Judges seemed disposed to dismiss the claim; but the rest of the Court were unanimous, and without a vote or almost any argument ordered him to be expunged.

He also complained of Sir Alexander Gordon of Lessmore being enrolled notwithstanding that in his claim that he lodged the valuation of his land was left blank contrary to the statute. This complaint we also sustained without a vote, and ordered him to be expunged.

No. 66. 1754, Jan. 18. FORDYCE of Gask, *Supplicant*.

FORDYCE of Gask complained of being refused to be put on the roll at Michaelmas, though he produced a retour of his lands of Gask as old as 1513 proving the old extent