

1741. *November 10.* CASE OF PERTHSHIRE.

No. 12.

A FREEHOLDER who was refused to be put on the roll requiring the meeting to appoint a day for this Court's determining the question, and on their refusal, having intimated to them to attend this Court this 10th November, that was not found sufficient to bring the freeholders into Court, but the complaint was ordered to be served on all parties concerned, and them to answer ten days after service, as had been done on the like question in Sutherland.

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1741. *December 4.*

HUME CAMPBELL *against* HOME of Wedderburn and SINCLAIR.

No. 13.

FOUND again (See No. 9.) that double returns did not fall under the sanction of the act 7th Geo. II. And found also that the clerk had not incurred the penalty of that act for returning Sinclair, in which I did not vote. The first part was upon appeal affirmed, but the last was reversed. *Vide inter eosdem voce APPEAL.*

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1741. *December 4.* ELECTION OF BERWICKSHIRE.

No. 14.

WHY the returns of clerks to freeholders, or to burghs which are directed to be made to the Sheriffs, and by them annexed to the writs, are executed in the form of an indenture betwixt the clerks and the Sheriffs?—This led me, after the Court rose, to look into the acts directing the manner of these returns, when I found, that by the act of the Scots Parliament, which became part of the articles of Union, the clerks of these meetings of freeholders, and of the presiding burgh, were to return the names of the persons elected to the Privy Council, by whom they were to be returned to the Chancery. But this was altered by the act abrogating the Privy Council, and instead thereof, these clerks are to return the names of the persons elected to the Sheriff, (and in the case of Edinburgh, the expression is *certify* the names, instead of *return*,) who shall annex it to the writ, and return it with the same, &c. The method of executing this it seems has been, that the form of an indenture is executed between the Sheriff and clerk of the freeholders, and that is annexed to the writ. But for what reason it is done in that form I know not, since that can hardly be called a return by the clerk to the Sheriff, or a certificate by the clerk, as it is expressed in the case of Edinburgh. All the subsequent acts, particularly the one 7mo. Geo. II. speak of a return by the clerks to the Sheriff very agreeably

No. 14.

to the former acts indeed; but it led me to imagine it was a different writing from the indenture returned by the Sheriff. However, I now find, that that writing that the Sheriff annexes to and returns with the writ, whatever be the form of it, is the very return that the clerk makes to him, and I doubt it is impossible that that can set forth the *res vere gesta*, or it would be a very improper return to the writ. The form of indenture seems taken from act 7th, *8vo* Henry VI. but ill adapted to the words of our acts, and yet the same words are continued in the act lately made, 16th Geo. II. *anno* 1743.

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1741. *December* 18. ELECTION of the DISTRICT of BRECHIN.

No. 15.

THIS was a complaint against the clerk of a presiding burgh (Brechin) for a wilful false return in favour of John Maul, whose chief defence was, that the election depended on the vote of Brechin, and though the Magistrates in possession voted for Udney, yet the other Magistrates who voted for Mr Maul were the true and lawful Magistrates, and so declared by a decree of this Court in a few days after the return in a process that depended long before the election. Several Lords thought, that though Mr Maul had the right of election, yet Udney had the right of return; yet they assoilzied the defender.

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1742. *January* 21.

CUNNINGHAM of Comry *against* LORD GEORGE MURRAY.

No. 16.

FOUND that no complaint lies against only two freeholders that they would not constitute themselves into a meeting to revise the rolls. The complainers right here depends on the question, whether church-lands that pursuant to the acts of Parliament 1594 and 1597 were retoured in 1598 to a 40 shilling land, did entitle to a vote. *Vide* the papers with some notes on the petition.

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1742. *January* 21.

CUNNINGHAM, Younger of Balbougie, *against* The FREEHOLDERS of FIFESHIRE.

No. 17.

ONLY five freeholders in Fifeshire having constituted themselves into a meeting for revising rolls, a complaint against them for refusing to enrol a free-