

for the return he had made to the Sheriff, because if it truly narrated the whole proceedings, that Sir John Hume as preses, and he as clerk, were objected to only by 31, and the other preses and clerk by 35, and the separation, and that Sir John Sinclair was elected by those who separated and had chosen him as clerk, then I thought he would not have been in the terms of the statute, because he had not truly returned Sir John Sinclair as elected by a majority of the freeholders, therefore I say I called for his return, but was told it was not there, only there was a certificate by the proper officer in Chancery, that Sir John Sinclair was returned to Parliament, and the return signed by the Sheriff and his clerk; but that did not seem to me to be the return mentioned in the act, *i. e.* the return by the clerk to the Sheriff; however, they told me, that *de praxi* the clerk made no other than the indenture signed by him and the Sheriff, which to me seemed odd, considering the words of the act, and therefore I did not vote. (See the text of the next case, as to returns.)

**No. 15. 1741, Nov. 4, Dec. 18. ELECTION OF THE DISTRICT OF BRECHIN.**

FOUND the defenders not guilty of a wilful false return. 18th December, Adhered.

**No. 16. 1742, Jan. 21. CUNNINGHAM *against* LORD GEORGE MURRAY.**

THIS was a complaint, that a meeting of the freeholders of Perthshire, at Michaelmas last, refused to enrol the petitioner, or appoint a day for its being tried in this Court;— and the Lords found, that only two freeholders being present at the head court, no complaint lay against them for not constituting themselves into a meeting for making up the rolls. The question here was, (had we come to the merits of the petitioner's title). Whether church-lands retoured in 1598, pursuant to the act of Parliament 1594 and 1597, to be 40 shillings of old extent, do entitle to a vote? The case was very well argued in the answers for Lord George Murray, &c.; and Royston told me he was of opinion with the answers. I have also made my observations on the back of the petition; and at present incline to think, that church-lands extended, may entitle to a vote as well as temporal lands. 21st January, The Lords Adhered.

**No. 17. 1742, Jan. 7, 21. CUNNINGHAM *against* THE FREEHOLDERS OF FIFESHIRE.**

THIS was a complaint of the same kind with the former, and though few freeholders were present, (only five) yet as they did constitute themselves into a meeting, we found the complaint competent; but as to the merits the evidence afforded of its being a 40 shilling land of old extent, was only charters and precepts of *clare constat* by the subjects superior, the Baron of Innerkerthyne and the Earl of Haddington, from 1602 and 1609, down to 1687, with arguments from the book in the low register, as certified by Mr Corse, that the old extent might be proved not only by retours, but also by infestments, and the former decisions, 10th February 1741, marked by me, under 3d February 1741, Elections of Dumfries-shire was quoted, (No. 4,) though it was admitted that that interlocutor was stopped on a reclaiming bill. We had no answers for the meeting; but Mr Scrimgeour, Advocate, who was a freeholder, was admitted to plead it for himself, and