

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

showed the proceedings upon which the petitioner was refused to be enrolled, and whereby it appeared, that the petitioner's lands, under which he claimed, called Doul, remained extended jointly with other lands then belonging to the same heritor, to L.4 old extent as late as 1613, as appeared by the tax roll of that year, which was an evidence that there had been no lawful division before that time, and consequently that Doul was not a 40 shilling land at the date of the charters 1602 and 1609. 2dly, That by the valuation book, these other lands jointly extended with Doul in the 1613 stand valued in the re-valuation of that shire at L.639, whereas these lands of Doul, joined with the petitioner's father's lands of Balbougie, which last are L.4 land, are valued at L.535, and consequently, were there a division of the old extent of these other lands from Doul, the lands of Doul could hardly be L.1 land; and though it was said for the petitioner, that the reason of the high valuation of these other lands was, that the proprietor had purchased other lands that now went under the same name, and were jointly valued with them, yet that still rendered it the more doubtful what the old extent of them was, and consequently what was the old extent of Doul;—and therefore we found, that the petitioner had brought no sufficient evidence of the old extent of his lands of Doul, and refused his petition. 21st January The Lords adhered, and refused without answers. *Renit.* President.—But Arniston argued strongly for the judgment.

No. 18. 1742, Jan. 21. LORD ROYSTON, Liferenter, and CAPTAIN M'KENZIE, his Son, Fiar,—Ross-shire.

THE question was, Whether Royston, being upon the roll, his son Captain M'Kenzie could also be enrolled as fiar, so as to vote when his father shall not claim?—and the Lords found that both might be enrolled at the same time, but with a *proviso* and quality to Captain M'Kenzie, that he shall have no vote at meetings for elections, or making up of rolls, but when the father is not present or does not claim a vote at such meeting.

No. 19. 1743, June 28. FREEHOLDERS OF EDINBURGH, *Supplicants*.

THE question was on the construction of the last act of Parliament, Whether we could receive a complaint against persons standing upon the roll till after Michaelmas next? and without a vote we agreed we could, *sed renitente* President.

No. 20. 1743, July 20. LORD ROYSTON'S COMPLAINT.

ROYSTON complained that the last Michaelmas court in his absence and without any notice given him to produce his writs had expunged him out of the roll, on which he had stood from 1708, against which Lord Fortrose had protested and required the meeting to attend this court 15th January last for a determination, and therefore praying redress. We then allowed him to serve the parties concerned with a copy, and he served the person who in the minutes had objected, and the President of the meeting, who put in answers, and parties being heard, we found that this complaint was competent notwithstanding the late act concerning elections, (*quibusdam renit. inter quos* President, as I thought,