

Nos. 23, 24, 25, 26. 1745, Jan. 7, 19. HAMILTON OF AIKENHEAD—
DUNDAS OF CASTLECARY—HAMILTON OF AIRDRIE, &c.

ON my report sundry objections were sustained against persons on the roll, particularly Hamilton of Aikenhead, who produced his infestment in land on a retour in 1741 returning them to L.10 old extent, and to supply the want of a retour before 1681 referred to the respond-book in Exchequer from 1591 to 1606, where it is inserted agreeably to that extent, and was taken from a retour then made and a precept from the Chancery upon it to one John Maxwell, but the retour itself lost, and the record of it in Chancery also lost, as most of these records are before 1660. And Dundas of Castlecary produced extract sasine, proceeding on and reciting *verbatim* the precept from the Chancery on which it proceeded, wherein his lands are designed 40 shilling old extent and L.8 new, and he appealed to the respond-book of that time in Exchequer agreeing therewith; yet because of the express words of the act 1743, that no person should be entitled on the old extent unless such extent is proved by a retour before 16th September 1681, the objection was sustained.

3dly, Hamilton of Wishaw produced a retour in 1682 retouring his lands to L.2. 6s. 8d. both of old and new extent, and the feu-duty the same. The Lords sustained the objection that the old extent was not distinct from the feu-duty, and found that the act 1681 was not in that respect altered by the act 1743. Arniston at first differed, and said he did not understand that clause of the act 1681, but upon reading the retour whereby it appeared that they were kirk-lands he also agreed, because there never was any extent of them. But I believe in that he was wrong.

4thly, Hamilton of Airdrie was infest in lands valued at L.340, and his wife and her two sisters were infest as heirs to their father in 1702 in lands valued at L.73. The two sisters were dead and she apparent-heir to them, and the whole together was more than L.400, and the Lords found that the valuation of the lands wherein his wife was infest might be conjoined with his own, but that the valuation of the lands wherein she is only apparent-heir could not be conjoined;—and therefore sustained the objection. All these found without putting a vote.

5thly, Hamilton of Westburn produced an infestment in the just and equal half of a 20 merk land, and that it was a merk land was admitted to be proved by a retour in Chancery in 1625 in favours of M. of Hamilton,—and produced a contract of division between the heritors of the two halves in 1671 dividing and ascertaining the share of each, and according to that division Westburn had full possession, though his infestments continued still in the account the half of such a 20 merk land. Arniston told us the House of Commons had found (I think in an election of Dunbartonshire) that such infestments in the half of lands *pro indiviso*, are no titles, because the possession being *pro indiviso* could not be called possession of a 40 shilling land,—but he thought that this contract of division being before 1681 and possession conform, was sufficient. But others thought, (*inter quos Tinwald et ego*) that if the infestment without any division would not give a title, a private contract of parties could be no legal evidence against the other freeholders of the equality of the division, or that Westburn's share is either a half or a tenth part of the

old extent no more than it would be of the valuation; but that legal evidence behoved to be brought of it in a proper Court, and since there does not appear any legal division of the extent, Westburn has no title, and by the act 1743 no division after 1681, or to be now made, can avail;—and it carried by the President's casting vote to sustain the objection. 7th February, Adhered as to Westburn.

No. 27. 1745, Feb. 13. BREBSTER'S CASE,—CAITHNESS-SHIRE.

THE question was upon Sinclair of Brebster, Whether he had right to vote at elections (which came before us pursuant to the late act 1743) who was infeft in lands, and teinds of his own lands valued above L.400, whereof the teinds had been separately valued in 1702 at L.62, but without these teinds the valuation did not amount to L.400? The Lords found he had a title. Kilkerran spoke against it, but did not vote. Strichen voted against it, and Arniston was absent. The rest were I think for it.

No. 28. 1745, Jan. 5. SIR WILLIAM MAXWELL'S CASE,—LANARKSHIRE.

THE Lords unanimously repelled the objection to Sir William Maxwell's sasine that the witnesses had not signed the pages; and 2dly, that the notary had not in his attestation numbered the leaves;—and sustained Sir William's vote.

No. 29. 1745, Feb. 5. CASE OF DUNBARTONSHIRE.

THEY found the books of Chancery were a public record, and sufficient evidence in terms of the late statute of the old extent, though the special retour was not to be found; and sustained the Duke of Lennox's retour (which was the subject of the question) sufficient evidence, though in the *valen.* clause they were not separately valued, but they were all separate in the descriptive and other clause, and the total in the *valen.* clause was L.1. 16s. 8d. Scots more than the particulars, which was but a small *error calculi* where there were 72 articles.

No. 30. 1745, Feb. 6. CASE OF ROSS-SHIRE.

MR M'KENZIE of Seaforth having in terms of the act 1743 complained of Monro of Teananich and others, and served them with it upon our warrant, they notwithstanding thereof at Michaelmas last turned them out of the roll, upon which Monro, &c. complained. Upon answers we found the freeholders had no power to turn them out of the roll, and that therefore they were to be held as still on the roll, but prejudice of such judgment as shall be given in the other complaint against them, and found them liable in L.10 sterling of expenses and expense of decret;—but we would give no judgment against Seaforth because of privilege, nor against Gorloch because his dwelling-house not designed in the execution.

No. 31. 1745, Feb. 7. CASE OF HAMILTON OF WESTBURN.

See Note of No. 23, &c.