again to be enrolled in 1749, after getting the valuation of his lands properly divided, and was refused, and complained again to us; and a question occurred, Whether a person refused by one Michaelmas meeting, can on the same title be received by another? and on that point we differed. Kilkerran thought he could not, and I thought he could, but we waved the question, and joined the two complaints; and found the petitioner entitled to be enrolled. Then the defender demanded expenses, because they could not enrol after a former meeting had refused; but we found them not entitled to any expenses.

No. 52. 1751, Feb. 6. SUTHERLAND *against* SUTHERLAND.

SWINZIE complained of the freeholders of Caithness, for refusing to enrol him at Michaelmas 1749. Their chief defence was, that his lands of Risple (Reisgill) were valued *in cumulo*, and jointly with the lands of Langwell, which hold of Breadalbane, (now of Ulbster) and had been most irregularly and iniquitously divided by a meeting of the Commissioners of Supply in June 1749, so as of L.800, at which both estates stood valued, Reisgill was by them valued at L.421. 5s. 6d. and Langwell, though of much greater real rent, was valued only at L.378. 14s. 6d.;—for setting aside which valuation a reduction apart was raised by Langwell, which came before me, and the complaint being delayed till that reduction were finished, I reported it this day. There were sundry reasons of reduction; and as the case appeared to me, the division of the valuation was very iniquitous. But as an objection was made to our power or jurisdiction to review the acts or proceedings of the Commissioners of Supply, I reported only that declinature, together with one reason of reduction which we behoved to judge, though the declinature were sustained, viz. that the persons who made the division could not act as Commissioners of Supply in 1749. As to the declinature, the pursuer insisted on our general power as supreme Judges in all civil causes; 2dly, Our power with respect to the old taxations; 3dly, A clause in the act of convention 1667 *in fine*. Answered, the valuing of lands was no civil cause at all, and the Commissioners were a commission of Parliament, appointed occasionally, or from year to year, to perform a certain office which no person has any power to do but in virtue of that commission, and is quite different from the method of levying taxations imposed by the old extent, and proportioned by the respective superiors and vassals, and the Bishops and other Clergymen, and their vassals, among themselves, without any commission of Parliament; and the act of convention 1667, in the clause referred to, is only an order to the Commissioners to bring in such part of the former taxation as was not then brought in, and adds a very necessary clause, in case any suspension of that tax had been passed, that these suspensions should be first discussed, but no suspension of Cess is allowed. As to the foresaid reason of reduction, there are two clauses in the act, one of them authorizing the persons therein named, or such of them as had qualified, or should qualify to be the Commissioners, and then after some other clauses, there follows a *proviso*, that none of them should act in execution of that act till he should first take the oaths of allegeance and abjuration, under the pain of L.20 sterling; therefore Swinzie alleged that these Commissioners had before qualified, and therefore were by the first clause appointed Commissioners; and though they did not qualify in virtue of the act 1749, their proceedings were not void, and they were only

liable in the penalty, for the act says no more, *et ubi lex pœnam statuit lex pœna contenta est.* The Lords were divided as to the declinature. Kilkerran was clear for repelling it, because sundry other rights depended on valuations besides the Cess, not only elections to Parliament, but heritors interest in division of commonties, and others. On the other hand, President seemed to think that we had no jurisdiction, though he saw many inconveniences from finding so, and was willing, if possible, to wave deciding it; and I inclined to the same opinion, though I saw the same inconveniences. Therefore they proceeded to the other reason of reduction, and found that these Commissioners not having qualified, by taking the oaths in execution of the act 1749, were not capable to act in dividing the valuation, and sustained that reason of reduction, *me tantum renit.* and in respect of that judgment, they on the other question dismissed Swinzie's complaint, and found him liable in the penalty of L.30 sterling. 25th June, Adhered.

No. 53. 1751, Feb. 12. SIR J. GORDON *against* SIR J. GORDON, &c.

THIS was a complaint against the freeholders for refusing to admit Sir John Gordon of Invergordon on the roll of freeholders, where one of the objections was alleged errors in the Commissioners of Supply in dividing the valuation of his lands from that of the Earl of Sutherland; and here we were forced to determine the question that we so carefully avoided on the 8th in Sutherland of Swinzie's case, *supra*, viz. the objection to our jurisdiction or powers of revising or altering the proceedings and sentences of the Commissioners of Supply; and it carried to repel the objection, *me tantum renit.*—but the President, who was of the same opinion with me could not vote, having declined himself,—and Justice-Clerk was of opinion of the interlocutor but did not vote because he did not hear the debate. *Pro* were Minto, Drummore, Haining, Strichen, Shewalton,—but Murkle was *non liquet*, and I hardly knew Dun's opinion, who was in the chair. He seemed for sustaining the declinature, but thought if any man was prejudged by an unequal valuation, he might be redressed by a proper process. The complainer's procurator Mr Craigie admitted, that if a division was made without any proof, that it would be a null decreet, and we had power to find so,—to which I could not agree.

No. 54. 1753, Feb. 23. COLONEL ABERCROMBY *against* J. GORDON.

THIS a Gentleman was also enrolled by the freeholders on this title: His elder brother Archibald was infeft in 1753 on a charter under the Great Seal on his father Peter Gordon's resignation in lands above L.400 valued rent, but reserving the father's liferent and power to sell, annailzie, or burden the lands, as he thought fit. Archibald is dead, and the said James his brother is his apparent-heir; and two days before James lodged with the clerk (agreeably to the act 16th Geo. II.) his claim to be enrolled. Peter the father assigned to him his liferent and renounced his reserved faculty, and he claimed to be enrolled as apparent-heir now that these faculties were renounced. The objection was, that he could not be enrolled as apparent-heir because his brother had no title to be enrolled, his right being quite precarious and nominal, and the renunciation, however it might entitle him to be enrolled were he infeft, yet it could not entitle him to be enrolled as apparent-heir. Answered, Even Archibald was entitled to be enrolled, notwithstanding the reserved