

No. 68. 1754, March 1. ABERCROMBY *against* DUFF, &c.

COLONEL ABERCROMBY complained of Lord Braco's two sons and Mr Innes being enrolled, on sundry grounds, *inter alia* that the lands conveyed by Lord Braco to Mr Alexander Duff and Mr Innes were conveyed without mentioning the teinds, and in these terms they had got their charters, though to his eldest son he had conveyed part of the same tenement both lands and teinds; that in dividing the valuations the Commissioners had divided by the real rent of the lands and not deducted the teinds of his lands, nor deducted from their valuation a proportion corresponding to the teinds, which deduction would have reduced them within their L.400; and though he afterwards conveyed the teinds on which they got a new charter, yet they were not thereon year and day infeft. Answered, It was only by oversight that the teinds were omitted; but it would have made no difference though he had never conveyed them; that there are no teinds in Banffshire separately valued; and if Lord Braco had had no right himself to the teinds, if they had belonged to another titular or patron, or been allocated to the minister, the valuation must have been the same; and in that case Lord Braco's not disposing the teinds would have made no objection; that in some few instances, and in a few counties, there is a separate valuation originally of the stock and teind, and in these cases the valuation must continue separate till at least they come into one person, but generally in most of the lands in Scotland there is no separate valuation of the teind from the stock, whoever has right to the teinds; but the lands are valued in proportion to the real rent, and the heritor of the lands is liable for the whole Cess, and if he obtains a decret of sale of his teinds against the titular or patron, it makes no addition to his valuation, nor diminution of the titular's, nor when the minister's stipend is augmented; and had it been otherwise the act 1690 would have made a great alteration in all the counties in Scotland, and greatly encreased all the patrons valuations without diminishing the heritors, since their stock remained the same, which would have been impossible, because the total valuation of the county could not be altered without authority of Parliament; and in the same way every sale of tythes by this would alter the valuations both of buyer and seller, and every augmentation of stipend would lessen the valuation of the heritors, which could not either be without losing a part of the supply, or a revaluation of the county. The Lords repelled the objection, *renit.* President, Justice-Clerk, Shewalton, Woodhall, *et* Auchinleck.

No. 69. 1754, March 2. STEWART and HAMILTON *against* MAXWELL.

SIR ARCHIBALD STEWART of Castlemilk and Hamilton of Aikenhead complained of admitting Sir John Maxwell of Pollock on the roll in right of the superiorities of several parcels of lands, *inter alia* on these two grounds: The lands of Meikle Govan belonged to a great many small feuars, and he had right to the superiority of one of them. In 1726 these feuars entered into a contract dividing their valuations according to their real rent expressed in the contract, and they were accordingly so entered by the clerk in the Cess books. At a general meeting in 1748 it was represented to a general meeting of Commissioners that they had no authentic valuation if it was not one in 1722; that the clerk had made out a valuation book as exact as he could; therefore the meeting

appointed a committee to examine the book, and after several meetings they made a report, and the meeting approved the book with one amendment; and in it the valuation of Meikle Govan was divided in terms of the contract. The complainer objected that this division was made without any proper authority and without proof; 2dly, That the deceased Sir John Maxwell who had purchased these superiorities in his son's name gave the disponer an obligatory letter that he should redispone them, and offered to prove it by the respondent's oath, who deponed that the first time he heard of such a letter was after he had lodged his claim to be enrolled; that thereon he sent a message to enquire at the disponer whether it was so, who thereupon wrote to the respondent and sent him inclosed his father's letter to be disposed of as he should think fit: Therefore the complainer objected that his right, being no proper wadset, but under an obligation to redispone, gave no title while that letter remained, and if he had no title to be enrolled when he entered his claim, he should not have been enrolled. We unanimously repelled the first objection, because the contract 1726 appeared to have been entered into without any view to elections, and was sufficiently authorized by the general meeting in 1748. The Court also repelled the second objection, in which Drummore, Haining, and I did not vote; and the President thought that though the letter had been yet standing or unretired it would not have been a good objection, and that the act 12 *Anna* meant not to alter our law as to qualifications of electors, but to give a new mean of proof, and that a temporary right of property was a good vote though no wadset, and he was told that the letter was only to redispone after ten years.—(N. B. He was told this when at the Bar, being consulted on the complaint, but nothing of it appeared before us.)

MESSENGER.

No. 1. 1738, Nov. 3. ALEXANDER ROSS *against* THE SHERIFF-CLERK OF ROSS.

IN the reduction *Monro against Ross, messenger*, of a bill,—the Lords last Session assoilzied from the reduction, notwithstanding there appeared great imposition on *Monro the Minister* by the messenger, because it appeared by the proof that this bill was the effect of a transaction by the interposition of arbiters, and an abatement given; but because of the evidence of malversations by *Ross*, in his office of messenger, they ordered him to sist himself at their Bar this day, which he did; and being examined and heard by himself and his procurators, the Lords found that all messengers ought to be paid their fees and expense for execution, letters of horning, or caption, by the creditor employed, and not by any exactions from the debtor; and found that any messenger claiming, exacting, or taking from any person or persons under diligence, by horning or caption, any sums of money, or security for the same, under colours of fees or expenses, for executing or delaying of execution of any such diligence, or of going or coming to and from