The Lords found that the not designation of the dwelling-house could be supplied.—*Dissent. Preside et Elchies.* The *ratio decidendi* was the practice and course of decisions.

1741. *February* 7, 8, &c. ELECTION PROCESS of DUMFRIES-SHIRE.

[Elch., No. 4, *Member of Parliament.*]

IN this case the Lords found that the Privy Council of Scotland had no power to annex or disjoin counties. The Court seemed to be of opinion that a charter from the crown, before the 1681, was sufficient evidence of the old extent, as being liable to no suspicion that the extent was heightened in order to create a vote. But the same regard was not given to charters from subjects, because in them, the old extent, which was the rule for the relief of the taxation, which the superior had from the vassal, was determined commonly by private paction betwixt them. Nevertheless they found that a charter from a subject, in the year 1610, was sufficient evidence for a jury to retour the old extent in 1736. This carried by the President's casting vote. Arniston *non liquet*, Elchies *Dissent.*

N.B. In this case the retour alone was not thought sufficient evidence unless supported by some other document, nor was the objector put to the necessity of reducing the retour; but they found, that even a charter from the crown in the 1613, designing the lands to be a four-pound land, was not sufficient evidence of the old extent, because the lands were church lands, and it did not appear that there ever was any general commission to retour all the church lands of Scotland, or that these lands in particular ever were retoured; and because lands were frequently designed to be pound and penny lands without any regard to the old extent, perhaps from the real rent; and thus they explained the Act 233, 1594.—*Dissent. Preside.*

Item, The Court was of opinion, that the meaning of the Act of Parliament 1681, requiring that the old extent should be *distinct* from the feu-duties in feu-lands, was to obviate an abuse that had crept in some time before, (Arniston said, about the Reformation,) of retouring lands holding feu either of the king or church to the avail of the feu duty by way of old and new extent, whereas, by the taxation Act 1597, the feu duties ought to be deduced, and the free rent of these lands only considered, in rating the extent; therefore, when the feu duty and the old extent was the same, there was just reason to suspect that the lands were retoured in the abusive manner above mentioned, and not in the way prescribed by the Act of Parliament 1597.

Item, The Lords found that a freeholder could be enrolled at a Michaelmas head court so as to vote for preses and clerk at the election, though happening before the year and day was expired. They went upon the same principles

that they proceeded on, when they found that purchasers could be enrolled to the same effect, *viz.* that voting for the preses and clerk, was not voting at *the election. Dissent. Arniston.*

Item, The Lords found, that though the infeftment was in the third or fourth part of a tenement of lands, yet, if the lands are afterwards divided, either by the sheriff upon a brief of division, or by contract betwixt the private parties, and possession had conform, the vote is good. This is the case of coadjudgers, mentioned in the Act 1681.

1741. *June* 11. BRECHIN ELECTION PROCESS.

[Elch., No. 15, *Burgh Royal.*]

THIS cause was mentioned before, *January* 28, 1741. The defenders, after all their *no processes* were repelled, proponed improbation of the execution of the summons, upon these three grounds:—1*mo*, Because the execution bore that copies were left at the dwelling-houses of James and David Doigs, with their servants; whereas the fact is, that they have no houses of their own, but are lodgers in other people's houses. This the Lords repelled unanimously, because the house where one lodges may not improperly be called his dwelling-house, and the servants of the house, that serve him, his servants; notwithstanding it was observed, that in such executions it is ordinary to narrate the *res vere gesta, viz.* that the person against whom the execution is made, is only a lodger, and that copies were left with the servants of the house. 2*do*, The execution against Grim, younger, bears that it was at his dwelling-house, and that copies were left with his servants; whereas, upon examination, by the messenger's own evidence, it appears that the execution was at the father's house, and that copies were left with his servants, and that the son lives, *i. e.* sleeps all night, and keeps shop all day, in a house which is contiguous to the father's house, but has no communication with it, (the door in the partition wall having been shut up above a year and a half,) and has an entry to another street; and that he only boards with his father, but is in every respect forisfamiliated. The debate upon this point held longer. It was argued for the defenders, That messengers, by the statute 1540, are tied to a certain form of execution, which cannot be dispensed with without the greatest hazard to the lieges: that, by this statute, where a man cannot be personally apprehended, the execution against him is ordained to be at his *dwelling-place*, which, in the style of criminal letters of hamesucken, (where the thing is most accurately defined) is said to be *where he rises and lies down*: that in this case the son lay in a house by himself, which, though contiguous to the father's house, was no part of it. This likewise the Lords repelled; in respect that Grim was boarded in his father's house, served by his father's servants, messages left for him there, and generally understood to live there: that, before the door of communication was shut up, there would have been no doubt, and,