

any defect in the division of his valuation, the freeholders in 1749 could not receive him. As to that point of law the Court was divided; but we first conjoined the two complaints together, and then found him entitled to be enrolled. The freeholders also sought expenses because they had done nothing amiss, but we found none due. (See DICT. No. 221, p. 8845.)

No. 51.

1751. February 8.

SUTHERLAND of Swinzie *against* SUTHERLAND of Langwell.

No. 52.

SUTHERLAND of Swinzie having complained for refusing to enrol him, though he produced a sentence of the Commissioners of Supply, dividing the valuation of his lands of Risple from the lands of Langwell, whereby the first was valued at L.4 12s.;—the defence was, that the sentence was most partial and iniquitous, and for that reason they had raised reduction, wherefore the complaint was delayed till the reduction should come in, and which was reported by me this day:—the reasons of reduction were chiefly two. 1st, That the Commissioners had not qualified by taking the oaths. Answered, The act authorizes them to act, if they either had already qualified or should qualify, and they had all formerly qualified. Replied, The Supply Act 1748 and 1749 introduced another *proviso* obliging the Commissioners to qualify anew before they act in execution of these acts. Duplied, That *proviso* has an annexed penalty of L.20 sterling;—*Ergo*, Their acts are not void, only the penalty is incurred.—The second reason was, great iniquity in making the division. Answered, These Commissioners are Commissioners of Parliament, and none of their proceedings can be reviewed by the Courts of law. We were very unwilling to determine this last point, because of difficulty, and likewise of manifold inconveniencies on both sides, therefore we determined the first, and found these Commissioners not capable to act, and dismissed the complaint. *Vide* Sir John Gordon's Case, No. 53. (See No. 58.)

1751. February 12.

SIR JOHN GORDON of Invergordon, *against* SIR JOHN GORDON of Embo,
and M'KAY of Bighouse.

No. 53.

SIR JOHN GORDON of Invergordon having complained of the freeholders refusing to admit him on the roll of electors, and having on our warrant ex-

No. 53. ecuted his complaint against John Doull, one of the objectors ; afterwards John Doull died, and Sir John petitioned again and obtained a new warrant, which he executed against other two objectors, Mr M'Kay of Bighouse, and Sir John Gordon of Embo ; for whom it was objected, that the first complaint was fallen by John Doull's death, and the second complaint was more than four months after the Michaelmas court. But we repelled the objection, and the President thought that no new complaint or summons was necessary, and that the first complaint being duly served on one of the objectors was equal as if it had been served on them all, 4th January 1751. But the same having come again before us, where the objection was, iniquity in the division made by the Commissioners of Supply ; the Court was forced to determine the objection to our jurisdiction, that they had so carefully avoided in the decision, Sutherland of Swinzie against Sutherland of Langwell, (No. 52. *supra*;) and they repelled the declinature, and sustained the objection to the division ; but the President, who was also of my opinion, had declined himself. (See DICT. No. 79. p. 7345.)

1753. . *February 23.*

COLONEL ABERCROMBY *against* JAMES GORDON, Banffshire.

No. 54.

COLONEL ABERCROMBY complained of James Gordon of Ardmellie, who was enrolled as apparent-heir to Archibald his elder brother, who in 1733 was infeft on the Crown's charter on the resignation of Peter Gordon the father, but reserving not only the father's liferent, but also power to him to sell, annailzie, or burden the lands as he thought fit. The father last summer renounced his liferent, and those powers and faculties, to his son James, (Archibald being dead) who in two days lodged his claim to be enrolled as the act 16th Geo. II. directs, and was accordingly enrolled. The complainer objected, That Archibald had no title to be enrolled because of the father's reserved powers, and therefore though the son, now that these powers were renounced, might indeed be enrolled were he infeft, but he could not be enrolled as apparent-heir to his brother. Answered, That notwithstanding the reserved powers, Archibald as fiar had a title to be enrolled, for his right was not a redeemable right in terms of the act 12mo Annæ. 2db, Though Archibald could not, yet James can, as now these reserved powers are extinguished. 3tio, An apparent-heir may conjoin his predecessor's rights and his own to make his vote good, as if the predecessor had L.200 valuation, and himself L.200 ; and quoted a case in the county of Lanark, Hamil-