

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 decret, 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

powers for it was no redeemable right in the words of the act 12th *Annæ*; 2dly, Though he could not yet James can, as this was an extinction of these powers; 3dly, An apparent-heir may conjoin his predecessor's rights and his own, as if he was apparent-heir in L.300 valuation and other L.300 of his own; and quoted a case in 1745 in the county of Lanark, where we found that an heritor could conjoin his own valuation with his wife's, but not with that of his wife's lands wherein she was only apparent-heir; 4thly, If this renunciation does not make a good vote, then neither would it be good were the father dead; so he should be in worse case than if the right of the whole lands remained still with the father. It carried to sustain the objection and to order Mr Gordon to be expunged. For the interlocutor Milton, Justice-Clerk, Murkle, Shewalton, and I, and Minto in the chair, *sed renit.* Drummore, Strichen, Dun, Kames. My reasons were, that though I thought an apparent-heir might possibly have right to be enrolled, albeit his predecessor could not be enrolled, for example, if the predecessor died before he was a year and day infest, or being infest on an adjudication or apprising and in possession, died within the legal, and the apparent-heir after the year and day, or after expiry of the legal, being in possession, claimed, I thought he had a title; but that the apparent-heir could not be enrolled or vote as apparent-heir, on a right that never was in his predecessor, but was acquired by himself; and therefore though he might be enrolled after expiring of the legal, yet if he should acquire a renunciation of the reverser, he could not within the legal vote as apparent-heir, because that right was not in his predecessor. That in this case Archibald's infestment during his father's life was in my opinion nothing but the figure of a fee because he could take it away at pleasure; but then its validity depended on a condition, and by the father's death without altering, became absolute and simple; therefore upon the father's death the respondent would be entitled to vote in right of his brother's infestment without any other right than was in his brother; but during the father's life he could not have been enrolled without a renunciation of the father's powers, which never were in his ancestor, and which therefore could give him no title as apparent-heir, and I doubted if an apparent-heir could conjoin his predecessor's valuation with that of his own, for it was not in terms of the act 1681 or the act 16th Geo. II. 3d July, Adhered, and Drummore turned for the interlocutor, as did Kilkerran on the answers.

No. 55. 1753, Feb. 28. COLONEL ABERCROMBY *against* BAIRD.

THIS Gentleman's title to vote was the Crown's charter in the lands of Northfield both old and new tenor thereof, and the lands of Grinley with their pertinents, and which are held of him by Keith of Northfield; and he produced a retour of the vassal's heir (who then held of the family of Marshall) in 1628 retouring the lands of Northfield and part of the lands of Whitefield to 10 merks old extent and 40 merks new. The words, as in the first clause, *Obiit sasitus in totis et integris illis 10 mercatis terrarum et Baronæ de Troup vocat. terris de Northfield, cum illa parte terrarum de Whitefield, pertinen. aliquando ad dict. lie mains de Troup.* And in the valen. clause, *Et quod totæ et integræ illæ 10 mercatæ terrarum de Troup vocat. terræ de Northfield, cum illa parte dict. terrarum de Whitefield pertinen. aliquando ad dict. lie mains de Troup nunc valent per annum 40 merc. et valuerunt tempore pacis 10 merc.* Objected, first, that this is not a retour of the Crown's vassal but of a sub-