took his whole Cess from either of them that pleased, such payment for 100 years would not make a division of the valuation, which can only be done by the Commissioners; and though if no other book were extant but the Collector's book of accounts, it could not appear that ever they had been jointly valued, and it behoved to be held for the valuation book, yet it cannot be so where the book is extant; and it appears that neither the parties nor the Commissioners thought this a division, since in 1749 Swinzie got his lands valued by the Commissioners at L.421. 6s. 4d. To the second, There is no evidence that the rental produced was the rule by which the Commissioners made the valuation 1701, nor does it agree with the rule and proportion observed by them in the county, as appears by their report in Parliament. 2dly, Were it the rental produced before them, yet where an estate is valued, and part of it perishes by overblowing of sand or inundation, or the rents vary, or grounds that paid no rent are improved, or a lake drained, and then the valuation comes to be divided, the rental at the time of division must be the rule, or in some cases the Cess will be lost, and in others there will be farms that pay no Cess. 3dly, At no rate can that rental justify this decreet of division, because it is *toto cælo* different from it. To the third, This question first occurred between Langwell and Swinzie, 8th February 1751, *quod vide* (No. 52.) and the Court waved the decision of it, but they decided it 12th February 1751, between Sir John Gordon of Invergordon and Sir John Gordon of Embo, (No. 53.) and found the Court competent, and set aside the valuation, which also they did in effect in March last, betwixt the freeholders of Caithness and Sir Robert Gordon and others, allowing a proof of rents said to be omitted to be proved before the Commissioners, which could not be done if the Court had no jurisdiction to review. To the fourth, If reduction were necessary, that could not be before the freeholders, who therefore would be bound by the decreet, however grossly injurious and partial, and therefore there could be no cause to complain of them, and very often there would be no party that had interest to reduce. In this case Langwell colluded with Swinzie, and therefore won't quarrel the division; and the other freeholders, that have no interest in either of the two estates, have no proper title to reduce it. These are the arguments used either by the Bar or the Bench, for they were not all pleaded by their counsel;—and it carried five to five to dismiss the complaint. For the interlocutor were Drummore, Strichen, Kilkerran, Kames, Justice-Clerk. Against it were Milton, Elchies, Murkle, Leven, and Minto, but he was in the chair, and had no vote. 20th July Altered, and sustained the complaint, when Kilkerran was in the chair, and Murkle absent, but Woodhall for altering. 3d August Adhered.

No. 59. 1753, Dec. 5. LORD LYON'S CASE.

LORD SHEWALTON reported a question from the bills, Whether he should pass a bill of inhibition against a member of Parliament, (Lord Lyon) now that the Parliament is sitting? Some thought we were not bound to know members of Parliament; others thought a prohibitory diligence could be no breach of privilege. I doubted much of both. However, most of the Court were for his passing it.

No. 60. 1753, Dec. 20. M'KENZIE, &c. *against* SIR JOHN GORDON, &c.

IN this county of Cromarty there are but five persons standing on the roll, Sir John Gordon, and his brother Mr Charles, and his brother-in-law Leonard Urquhart, and his