

1753. August 3. INNES of Sandside *against* SUTHERLAND of Swinzie.

No. 58.

THE Sutherlands of Swinzie and Langwell having come to a better understanding, Swinzie applied a second time to the Commissioners of Supply for a division of their lands, and a long proof was led and transmitted jointly to their agents to have it laid before lawyers and to prepare a state of it, and accordingly a state was cooked up in such a fashion as to make both estates precisely equal without the smallest fraction of difference, so as the valued rent of each should be precisely L.400, and that memorial was laid before the Commissioners, who approved and divided the valuation accordingly, and Swinzie was admitted on the roll of electors. But Innes of Sandside complained to us, and objected to the division, that it was no lawful meeting of the Commissioners, because the first meeting of the Commissioners was appointed to be 4th June 1751, whereas the act being late of coming, they did not meet till 28th June, and as the first meeting was unlawful, so were all the subsequent meetings. *2do*, Manifest iniquity and partiality. The first we unanimously repelled. To the second, Objected, *1st*, The defender had no use for a division, for that the valuation was already sufficiently and effectually divided, and each had paid Cess for L.400, since the death of Langwell, who had both estates in 1708, and they are so stated, *i. e.* at that valuation in the Collector's Cess-books, though no formal division appears in the book of valuation. *2do*, That this Court had no power to receive or alter the Commissioners of Supply's proceedings. *3tio*, There is produced the rental of both estates given in by Langwell when the last total valuation of the shire was made in 1702. Answered, The parties paying voluntarily the Cess of their father's estate equally till a legal division of the valuation should be made, could not itself make such a division, and this is the second division that Swinzie has applied for and got, because there had been no former division, and in that point both the parties and likewise the Commissioners, who must all have known the fact, did agree. To the second, That great absurdities would follow if we could not review the Commissioners proceedings in dividing valuations to entitle to be enrolled among electors to Parliament. To the third, There is no evidence that the valuation 1702 proceeded on that rental, nor could it, for even the arithmetical calculations are not just, and still this new division is erroneous, for by that rental, the two estates are not of equal extent, though it makes Swinzie's estate the largest which truly it is not.—It carried 23d June 1753, by the narrowest majority possible to dismiss the complaint; but 20th July we found the complaint well founded, and ordered Swinzie to be expunged from the roll.—Adhered, 3d August. (See DICT. No. 50. p. 8642.)