No. 67.

1754. *February* 6. CAMPBELL of Succoth *against* ———.

MR CAMPBELL of Succoth complained for refusing to enrol him, who had acquired a proper wadset that had been purchased in 1735 by the deceased Captain Campbell from Herbertshire, of lands partly property, partly superiority, valued L.410. It was objected, that a superiority could not be wadset. 2*do*, That it was not a proper wadset, for that in case any casualties of superiority fell he was accountable for them. 3*tio*, That the valuation of the property lands was only divided by a private meeting. Answered, A superiority may be wadset as well as any other right. To the 2*d*, That makes the right no worse than if the casualties had been discharged or gifted or reserved, which does not make the wadset improper. To the 3*d*, That that division was approved by a general meeting in 1753. Objected, 4*to*, That Herbertshire having acquired the property of these lands whereof he had wadset the superiority, he conveyed both property and superiority to Lady Forrester, who conveyed them to Forrester of Dunnovan, who is publicly infeft and in possession. Answered, That infeftment cannot hurt the complainer's prior infeftment whereof Lady Forrester was in the knowledge, as is proved by bonds granted to her by Herbertshire and Solicitor Haldane. The Court repelled the three first objections, but superseded the fourth till we should have evidence of possession. Herbertshire reclaimed, and then entered an appeal, which he was afterwards allowed to withdraw on paying L.40 of costs; and answers being put in with the proofs of possession, we adhered and repelled the objection of want of possession, and ordered him to be enrolled. And on a fresh appeal the judgment was affirmed in Parliament, April 1754. (See DICT. No. 8. p. 2439.)

No. 68.

1754. *March* 1. ABERCROMBY *against* DUFF, &c.

COLONEL ABERCROMBY complained of enrolling Lord Braco's two sons, Mr James Duff the eldest, and Mr Alexander and Mr Innes, *inter alia*, because the lands conveyed to them were jointly valued; that Lord Braco had conveyed also the teinds of his eldest son's lands, but had not conveyed the teinds of Mr Alexander Duff's or Mr Innes's lands; that the Commissioners had divided the valuation according to the rent-rolls, and yet had not deducted the teinds of Mr Alexander's or Mr Innes's lands; and though he has since conveyed the teinds on which they have a new char-

ter, yet they are not year and day infeft upon it. Answered, That it was *per incuriam* that the teinds were omitted in the first disposition, but it would be no objection though they were not at all disposed; that in Banffshire and most of the shires in Scotland no teinds are valued, and it makes no difference in the valuation who has right to the teinds, whether the heritor of the stock, the minister, the patron, or other titular; the valuation is still in proportion to the real rent, and the heritor of the stock is liable for it; otherwise the act 1690 giving the teinds to the patron would have made a great revolution in all the valuations, in all the shires in Scotland, and yet it made none of the patron's valuations, and the heritors' valuations remained the same. When a stipend is augmented, it makes no change in the valuation of the heritors, not even when one heritor's teinds are exhausted being free teind, and the titular's and other heritors not touched, because they have heritable rights; and when an heritor recovers a decreet of sale of his tithes against the patron or other titular, no alteration ensues in the valuation of either buyer or seller, which yet there must, if the complainer's objection were good. The Court repelled the objection, 1st March 1754.—*Renitent.* President, Justice Clerk, Shewalton, Woodhall, and Auchinleck. No. 68.

1754. *March* 2. STEWART and HAMILTON *against* MAXWELL.

No. 69.

SIR ARCHIBALD STEWART of Castlemilk, and Hamilton of Aikenhead, having complained of enrolling Sir John Maxwell on a right of property and superiority of several small parcels of land, of one of which parcels (the superiority of one of the feuars of Meikle Govan,) the valuation had not been lawfully divided from the other lands valued *in cumulo* with it. The case was, that there being many small feuars of Meikle Govan, they entered into a voluntary contract in 1726 for dividing the valuation of their lands and Cess in proportion to their real rent, and the contract contains the real rent and proportional valuation of each feuar, and that valuation the Collector entered in his books. In 1748 on a representation to a general meeting of the Commissioners that there was no authentic valuation of that county, and that the clerk had prepared one as exact as he could, a Committee was appointed for examining that book, who after several meetings made their report that the book was right except as to one amendment, and the general meeting approved of that book; and as the division was made when there could be no suspicion of any sinister view or design, and had the sanction of a general meeting, we repelled the objection. The 2*d*