

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 decret of division, because it is *toto caelo* 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 decret, 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

cousin Gordon of Ardoch, and Cadboll, and this last never qualified; and as there is an election only every second Parliament, there has it seems been no meeting of freeholders there since the act 16th Geo. II. *anno* 1743, nor no particular day appointed in terms of that act by the Sheriff for such meeting. Last autumn a claim was regularly entered by M'Kenzie of Highfield to be enrolled, and his titles produced, and at the same time objections lodged in both his name and Cadboll's against the other four upon the roll. The Sheriff had it seems in 1743 appointed the third Tuesday of October to be the day, but had not published it as that act directs. On that day the four on the roll were in the town of Cromarty, but thought not proper to go to the place of meeting, and Cadboll came not at all to the town, and there was no Sheriff-clerk then acting, but an interim one appointed by the Sheriff; and the clerk appointed by the Keeper of the Signet had not officiated or accepted of the commission. Highfield required these clerks to go to the court, and constitute a meeting of freeholders, which they could not do, and I suppose were not inclined, for Leonard Urquhart, one of the freeholders, was the person that got the commission to be clerk; and no meeting of freeholders being held, Highfield lodged a summary complaint in terms of the act 16th Geo. which being served on 30 days in common form, and answers put in, and this day heard; we all agreed that it was a great abuse; but the question was, Whether we could give any relief? We all agreed that it was not within the act 16th Geo. II. and therefore not competent in this summary way. 2dly, Supposing it competent, we could neither fine or otherwise punish the freeholders for not meeting, nor order the petitioner to be put on the roll, nor expunge any of the other four, till the freeholders in a meeting first gave their judgment, or refused to give it, which was agreeable to our judgment 6th and 21st January 1742, Cunningham of Comrie against Freeholders of Perthshire, (No. 16.); but in this last Drummor seemed to differ. However, we all agreed to dismiss the complaint as incompetent.

Nos. 61, 62, 63. 1754, Jan. 3, 4, 9. MAJOR CUNNINGHAM.—CUNNINGHAM OF BALLINDALLOCH.—CAPTAIN ROBERT CUNNINGHAM.

THE freeholders having refused to enrol Major Cunningham, he complained. His case was, that having purchased lands and got a disposition with precept to be held *a me aut de me*, he was immediately infeft, and some time after executed the procuratory and took a charter of resignation, containing as usual a confirmation of his own former and all other infeftments; when he lodged his claim to be enrolled with the Sheriff-clerk, he with it lodging as his title the said charter of resignation and sasine taken on the precept contained in it, but not his former sasine; so the objection was, that confirmation of the former sasine operated *retro*; and therefore the sasine on the charter of resignation was void and null. The Court unanimously found the complaint well founded, repelled the objection, and ordered him to be enrolled.

In the same petition Cunningham of Ballindalloch complained of their refusing to enrol him.—The case was, that his lands were valued in the Collector's books at L.473, —that they were so in the book lying in the Exchequer, which was the Collector's book in 1691, and was lodged after the Union, and is the rule of taxing the composition, and there has been no different valuation of these lands since that time, and the original