

This question was not here determined; the matter going off on this *reply*, That the Commissioners, though having taken the oaths on other occasions, yet not having done it to qualify them to act upon this statute, their proceedings were null.

No 5.

*Duplied*, The act having imposed a penalty on such as should act without qualifying themselves, their actings were not null, providing they were contained in the nomination.

THE LORDS, 8th February, found, that the Commissioners of Supply, by whom the division of the pursuer's and defender's valuation was made, not having taken the oaths of allegiance and abjuration, pursuant to the act of Parliament 1749, years, were not capable to act in the execution of that act, or to make the said division; and therefore found the same void, and reduced the said division; and dismissed the complaint.

Swinzie petitioned against the interlocutors in both causes, which the LORDS refused.

In the Complaint, Act. Ferguson. Alt. Lockhart.  
In the Reduction, Act. Lockhart. Alt. W. Grant. Clerk, Justice.

*Fol. Dic. v. 3. p. 137. D. Falconer, v. 2. No 204. p. 246.*

1753. February 21.

COLONEL ABERCROMBIE *against* WILLIAM LESLIE of Melross.

By a Michaelmas meeting of the freeholders of the county of Banff, the defender was enrolled in the roll of electors for that county.

The pursuer, one of the freeholders, complained; and objected, That the freeholders had enrolled the defender without legal evidence of his valued rent; for that the division of the valued rent of certain parcels of his lands from that of some lands belonging to another freeholder, had not been made by a legal meeting of the Commissioners of Supply, but only by a private meeting of four Commissioners, not summoned in terms of law. At advising this cause, though no iniquity was alleged in the division of the valuation made by the Commissioners, yet the Court was very clear, that, by the act of the convention of the estates 1687, the act 1690, William and Mary, sess. 2. cap. 6., and the other acts touching the supply, the meetings of the Commissioners must be either upon the day mentioned in the act of Parliament, or by adjournment, or when summoned by the convener. Now, as the meeting of the Commissioners was not summoned in any of these ways, it must be illegal; for when law appoints how a meeting is to be called, it must be called in that way, else it is not a legal meeting, and its acts are void.

No 6.

Commissioners of Supply cannot hold a meeting to make division of an heritor's valuation, &c. unless they are summoned, in terms of law, by the convener, on the day appointed by the act, or on another day by adjournment.

No 6.

' THE LORDS found the valuation not divided in terms of law ; and ordained William Leslie to be expunged from the roll of freeholders.'

Act. *A. Lockhart et R. Craigie.* Alt. *J. Ferguson et Advocatus.* Clerk, *Kirkpatrick.*

S. *Fol. Dic. v. 3. p. 136. Fac. Col. No 68. p. 102.*

1754. *January 9.*

Captain ROBERT CUNNINGHAM *against* GEORGE STIRLING, Esq.

No 7.  
Found as above.

At the Michaelmas meeting 1753, Captain Robert Cunningham presented to the freeholders of Stirlingshire a charter and sasine in his favour of part of the lands of Seabegs, and a certificate that his lands stood rated in the cess book at L. 414 : 2 : 10 Scots, and claimed to be enrolled in the roll of freeholders, entitled to vote for a member to serve in Parliament for that county.

George Stirling, one of the freeholders, *objected*, That in the cess book 1691, these lands stand valued *in cumulo* with other lands, and were only separately valued in 1739, not by a legal meeting of the Commissioners of Supply, but by two Commissioners, who, without any proper authority or proof of the real rent, ordained the said lands to be rated in the cess books at L. 414 : 2 : 10 ; and the freeholders sustained the objection.

Captain Cunningham complained to the Lords of this judgment ; and *pleaded*, That there was a great difference betwixt his case and that of Leslie of Melross, (No 6. p. 2437.) where the objection, that the division was made by a private meeting was sustained, because the original valuation of the shire of Banff, where Leslie craved to be enrolled, was extant ; but the original valuation of Stirlingshire was not ; and therefore there was no proper evidence of a valuation *in cumulo*.

*2do*, That it had been the constant practice of the shire of Stirling to divide valuations by such private meetings.

*Answered* for George Stirling and other freeholders, That where the original valuation does not appear, recourse must be had to the next best evidence, which here is the cess book 1691, whereof a copy is kept in exchequer, and from which the valuation *in cumulo* appears. *2do*, Mr Cunningham's application for a division in 1739 is a sufficient evidence of a valuation *in cumulo* ; and, as to the practice of the shire, answered, it has not always been so : and, though it had, no practice could authorise a division so contrary to the acts of Parliament, by which the meetings of the Commissioners and their method of procedure are regulated.

' THE LORDS dismissed the complaint.'

Act. *Lockhart et Jo. Grant.* Alt. *Ja. Ferguson et Bruce.* Clerk, *Forbes.*

B.

*Fol. Dic. v. 3 p. 136. Fac. Col. No 96. p. 146.*