No. 10. 1738, Dec. 6. SIR JOHN HUME *against* HIS VASSALS.

IN a question betwixt Sir John Hume of Manderston and some of his vassals, concerning the import of the clause in the act 1693, anent heritors who had right to stock and teind, and afterwards feued the stock or lands without the teinds, Sir John having pursued a reduction of a decreet of sale obtained against him by these vassals, and founded his reduction on the above act, and for proving in terms thereof, produced a charter in the record, *anno* 1618, containing the lands and teinds, whereas the vassals produced no charter older than 1638, but which appeared not to be an original charter, but to have proceeded upon the former vassal's resignation; the question was, Whether it was incumbent on the vassals to produce their original charter, at least one older than that produced by Sir John Hume, or if Sir John ought to prove at what time the teinds were first feued, that it was after his charter; and the Lords were of this last opinion, and therefore found the reason of reduction not proven, 30th November 1737. But afterwards altered,—I think 6th December 1738.

No. 11. 1739, Jan. 10. THE HERITORS OF THE PARISH OF FOGO, *Competing.*

IN this case, most of us agreed, that if Hutton's right to the 11 bolls teinds out of Mortonhall's lands was perpetual, then those behoved to be allocated before what we call heritable rights, that is, rights in heritors of the lands to their own teinds; but what created the great difficulty was, that the heritors' right was by the decreet-arbitral declared preferable to Mortonhall's, yet it was of its own nature redeemable, being only a right in security of a sum of money, and Mortonhall, the heritor of the lands, had undoubtedly the right of reversion. But then as the redemption money, 2700 merks, was beyond the value of the subject, we considered it in effect a perpetual right, for we had no regard to the ratification and disposition obtained from Earl Home by Mortonhall, and therefore found these 11 bolls should be allocated before the heritable rights. And as to the old stipend, since this was a competition of the heritors among themselves, we found that though this was an original locality, the old stipend should be allocated according to the former use of payment; which perhaps is the first time it was decided in these, and would not hold where all the teinds were in the titular's hands, and assigned by him in payment of stipend as he pleased. On the first point we were pretty much divided, but in the last we were pretty unanimous, except Arniston alone.

No. 12. 1740, July 16. DUKE OF DOUGLAS *against* OFFICERS OF STATE.

AT last the Lords determined the difficult question on the act 1633, the rule of valuing tithes where the parsonage and vicarage are separate benefices, and neither of them ever drawn, but stock and teinds possessed by the tenants for a joint duty, and a small silver duty immemorially paid for vicarage. I thought the parson could have no benefit by the smallness of the vicarage duty, and that therefore the true value of both, separate from the stock, behoved to be proven; and though I thought the case of the heritors favourable in the eye of the law, and would have made the rent the rule, if it could have been proportioned betwixt the parsonage and vicarage according to their true worth, without regard to the small vicarage duty, yet I thought that could not be extricated, and

therefore thought the values of both behoved to be proven separate from the stock. However, the Lords found that the 5th part of the rent was the tithe parsonage and vicarage. 2dly, That the vicarage duty behoved to be deducted from that 5th, and the remainder was all parsonage tithe.—11th July 1739.

The interlocutor being reclaimed against, came to be considered, 16th July 1740, when we adhered;—and indeed upon considering the decreets-arbitral in 1629, I was more and more confirmed in the interlocutor, and that the several valuations spoken of where teinds were drawn, were meant a valuation of the teinds separate from the stock; but the separate valuation mentioned in the end of the act 1633, where there are different titulars of the parsonage and vicarage, (for which case no provision was made by the decreets-arbitral) was meant only to distinguish the value of the parsonage from the vicarage; and that in all cases the heritor should pay a fifth part of the rent for teind parsonage and vicarage; and the decreets bear expressly, that the King's ease, when the teind was drawn, was given in order to bring it as near as possible to a fifth-part of the rent that might be paid for stock and teind, and that the heritor can have no benefit by the smallness of the vicarage teind-duty; and really all the inconveniency mentioned in the petition would equally hold if the parsonage and vicarage were but one benefice.

No. 13. 1740, July —. VISCOUNT PRIMROSE *against* SIR J. DALRYMPLE.

I KEEP these papers chiefly because of the memorials, pretty full upon the authority and effect of a valuation of the sub-commissions not approven by the Court of Commission. In this case we thought that odd sort of decreet of the Commission to be nothing, and found that there was no decreet of valuation, reserving to the heritor yet to insist for approbation of the report of the sub-commission as accords.—16th July 1740.

N. B. 4th December 1740.—Yesterday in the Commission on the question betwixt Lord Primrose and Sir John Dalrymple, the Lords waved determining the question whether a report of the sub-commission not approved can prescribe so as a process of approbation may not be pursued after 40 years, though possession has followed agreeably to the report, *i. e.* the titular never drew the teinds, nor any duty higher than that reported by the Sub-Committee. Arniston thought the action prescribed;—but the Court thought it of great importance setting aside all the old reports, and though severals have been not many years ago approved.

No. 14. 1740, July 23. DOUGLAS *against* MINISTER OF ST. MUNGO.

IN this modification and locality, a question occurred, Whether converted services should be computed in valuing teinds? There were three classes of them; one whereby the master had the option of the *ipsa corpora*, the services or conversion. 2dly, Where the tenant had the option. And 3dly, Where there was no option, but a certain rent stipulated in place of services formerly due. There was no question as to the second, where the tenant had the option, that they could not be stated. The Court was also of the same opinion as to the first, where the master had the option. Arniston was of opinion even as to the third, that where it appeared that a part of the rent was on account of services that had been due out of those lands, and no fraud qualified, that