therefore found the division null, and that he could not be continued on the roll on that right;—found it competent to make objections at a Michaelmas court against a person formerly enrolled, which objection was not overruled by a former head court. 13th February The Lords adhered, agreeably to act 25th, Parl. 6. James II.

No. 6. 1741, Feb. 19. ELECTION OF CAITHNESS.

THE Lords found no necessity to call the persons enrolled by this Michaelmas meeting, in the same way as they had found in 1734 in the case of the Freeholders of Linlithgow, and therefore repelled the no-processes. *Renit.* President.

No. 7. 1741, Feb. 17. CASE OF SUTHERLANDSHIRE.

UPON a petition of freeholders, complaining of the last Michaelmas court, to whom they intimated to compear before the Court of Session to November, but no diet appointed by the meeting for that end, as the act 1681 directs, the Lords had appointed parties concerned to be served with copies; but as that would take a long time, because of the distance, the petitioners reclaimed, and insisted that the parties should be held as in Court, because of the intimation, and that the meeting should have appointed a diet. This had been appointed to be intimated in common form, though we could expect no answer from parties not summoned, nor perhaps inclined to sist themselves, and therefore came now (5th December 1740) to be advised without answers, when the Lords adhered, though several were for altering.

20th January,—Rogart, claiming in the right of his wife, an heiress, who is now dead, not infeft, whereby he can have no courtesy,—the Lords found he ought not to have been continued on the roll;—sustained also the objection to John Gordon of , whose title was, that he was married to a liferentrix, notwithstanding he was said to have been enrolled at an election 1722, but this was repelled, because there was no evidence of it, but a notorial copy. But many of us thought the answer not good, and thought though the Michaelmas head court could not alter, yet they might appoint a day for their appearing before this Court. 3dly, They repelled the objection against Sir John Gordon, that he was declared infamous, &c. in the terms of the act 1621. Several differed, and thought the objection good; others of us *(inter quos ego)* were not clear, and did not vote. 4thly, Sustained the objection to Robert Gordon of , that he was not in possession, but the lands sequestrated, as the estate of Gray of Skibo. Most of those who spoke were of opinion, that a debtor, whose estate is sequestrated for payment of his creditors, may notwithstanding vote. 5thly, Repelled the objection to Murray of Pulrossie, who was an heir of a tailzied estate served, but not infeft, and renounced the rents of the estate to the next heir, reserving L.500 out of the readiest of them. Adhered to the 3d and 5th, February 17th, without answers. 21st January, Found that Adam Gordon Delquholly ought not to be reponed to the roll, since he does not now produce any infeftment, though the Court was of opinion in the general, that a Michaelmas court ought not to turn freeholders out of the roll upon any objection to their titles, without giving them an opportunity of producing them; but here he did not even affirm in the head court that he was infeft, but gave a shifting answer.

23d, As to the class of persons refused to be admitted to the roll, the objection was made, that all pursuers having interest were not called; *i. e.* several freeholders upon the roll. I had before, in another question, given my opinion, founded, as I thought, upon the words of the act 1681, that only the parties contraverting, *i. e.* objecting, ought to be called,—and then both Arniston and the President distinguished, when the complaint was that one was wrongously added to the roll, then he only needs be called, because he alone is interested; but when the complaint is that one is wrongously refused to be put on the roll, then all the freeholders have an interest, and ought to be called. Here Arniston thought the objection not competent, because it was waved on Tuesday in the case Delquholly. Most of us differed from him, because they might wave as to one, and insist on it as to another, and the objection might be made in name of any of the freeholders not called; but I still doubted of the relevancy of the objection, upon which Arniston distinguished away his own distinction, and said, that were the process a declarator, all the freeholders behoved to be called, that is all on the roll; but where it was, as in this case, a complaint that the Michaelmas court had not appointed a diet, though required, and therefore had intimated to them to attend this court, founded on the act of Parliament, then only the persons objecting needed be called,—and indeed I agreed to the distinction so limited; and accordingly it carried to repel the objection. *Sed renit.* President.

6thly, February 6.—The next question came as to persons added to the roll, as was said unduly, and others refused to be admitted,—when we were obliged again to determine the general point, determined in the case in Berwickshire, 5th December, (No. 2.) when Royston and Haining were both absent sick, when we altered the former judgment, and found by the President's casting vote that purchasers may be added at the Michaelmas meeting.—*N. B.* Strichen did not vote. 12th February, Found that heritors and wadsetters, though holding of subject superiors not holding of the Crown, are entitled to vote. 13th, Found the nine ought to be enrolled, and repelled the objection to the eleven enrolled. 25th February, Adhered without answers. *Vide* 25th February, (No. 8.)

No. 8. 1741, Feb. 25. ELECTION OF TWEDDALE.

THE Lords found, that there being no requisition to the freeholders to indite a time for *attending* this court, nor intimation that the petitioners were to apply, nor no protest taken on the objection, that this summary application was not competent. 27th February Adhered without answers.

No. 9. 1741, July 15. ELECTION OF THE DISTRICT OF PEEBLES.—M'KIE of Palgowan *against* M'EWAN.

THE question was, Whether this action for a double return lies upon the statute, 7th Geo.? and found that it does not lie. Against judgment were. President, Drummore, Balmerino, Murkle, Arniston.—For judgment were, Justice-Clerk, Minto, Haining, Kilkerran, Ilay, Monzie, *et ego.*