No. 10. 1741, July 17. ELECTION OF KINROSS,—BRUCE of Kennet, *Supplicant.*

MR BRUCE of Kennet applied to the Court complaining of the election of Kinross, and of the Michaelmas meetings, that the clerk would not give him an extract of the minutes; but the Court would not receive the application.

No. 11. 1741, July 28. CASE OF SUTHERLANDSHIRE.

IN this case, the Sheriffs and clerks procurators waved the dilatory defence, that the House of Lords had not judged of the election; and upon hearing the cause, the Lords seemed to think that an adjournment was against law; that however, as that was the deed of the freeholders, it could not affect the clerk, who was bound to obey the majority; nor the Sheriff, who was to take his return from the clerk, who in this case was unanimously chosen. But in this case it being alleged, and a proof offered of a previous concert of the freeholders for bribing Sinclair to trifle away the time, and to adjourn till the return of their express from Edinburgh, and that the Sheriff-Depute and clerk joined with them in that concert, we allowed a proof before answer of several matters contained in a condescendence by the pursuer; but several articles were refused.

No. 12. 1741, July 28. CASE OF PERTHSHIRE.

ON a petition of Cunningham of Comrie, complaining that at last Michaelmas the freeholders refused to enrol him, and that he had required them to appoint a diet for attending this Court, and on their failure, had intimated to them to attend this day,—the question was, Whether that intimation was sufficient to bring the freeholders into Court? But the Lords appointed all parties concerned to be served with copies, and to answer ten days after service, as was done in the case of Sutherland. *Vide* 5th December 1740, (No. 7.) The cases were so far the same, that in both cases the complainers intimated a day to attend here. But in Sutherland there was not a formal requisition of the meeting to appoint a day.

Nos. 13 and 14. ELECTION OF BERWICKSHIRE.—HUGH CAMPBELL *against* HOME, &c.

THE Lords found, as in the case of Peebles, 15th July last, (No. 9.) that no action lies upon the act 7th, Geo. against the Sheriff, who returned both the petitioner and Sir John Sinclair. Kilkerran was absent with the gout; but Royston, who was then absent, was present now, and voted for the interlocutor; all the rest voted as marked (No. 9.) The next question was, Whether the clerk had incurred the penalty? and it carried by a majority, not. I was of opinion, that if he returned Sir John Sinclair to the Sheriff as duly elected by the freeholders of the county, that he had incurred it; but observing, that he affirmed in his answers, that he returned to the Sheriff the *res vere gesta*, as recited in these answers, wherein the fact was stated indeed pretty much as it came out, I called

for the return he had made to the Sheriff, because if it truly narrated the whole proceedings, that Sir John Hume as preses, and he as clerk, were objected to only by 31, and the other preses and clerk by 35, and the separation, and that Sir John Sinclair was elected by those who separated and had chosen him as clerk, then I thought he would not have been in the terms of the statute, because he had not truly returned Sir John Sinclair as elected by a majority of the freeholders, therefore I say I called for his return, but was told it was not there, only there was a certificate by the proper officer in Chancery, that Sir John Sinclair was returned to Parliament, and the return signed by the Sheriff and his clerk; but that did not seem to me to be the return mentioned in the act, *i. e.* the return by the clerk to the Sheriff; however, they told me, that *de praxi* the clerk made no other than the indenture signed by him and the Sheriff, which to me seemed odd, considering the words of the act, and therefore I did not vote. (See the text of the next case, as to returns.)

No. 15. 1741, Nov. 4, Dec. 18. ELECTION OF THE DISTRICT OF BRECHIN.

FOUND the defenders not guilty of a wilful false return. 18th December, Adhered.

No. 16. 1742, Jan. 21. CUNNINGHAM *against* LORD GEORGE MURRAY.

THIS was a complaint, that a meeting of the freeholders of Perthshire, at Michaelmas last, refused to enrol the petitioner, or appoint a day for its being tried in this Court;—and the Lords found, that only two freeholders being present at the head court, no complaint lay against them for not constituting themselves into a meeting for making up the rolls. The question here was, (had we come to the merits of the petitioner's title). Whether church-lands retoured in 1598, pursuant to the act of Parliament 1594 and 1597, to be 40 shillings of old extent, do entitle to a vote? The case was very well argued in the answers for Lord George Murray, &c.; and Royston told me he was of opinion with the answers. I have also made my observations on the back of the petition; and at present incline to think, that church-lands extended, may entitle to a vote as well as temporal lands. 21st January, The Lords Adhered.

No. 17. 1742, Jan. 7, 21. CUNNINGHAM *against* THE FREEHOLDERS OF FIFESHIRE.

THIS was a complaint of the same kind with the former, and though few freeholders were present, (only five) yet as they did constitute themselves into a meeting, we found the complaint competent; but as to the merits the evidence afforded of its being a 40 shilling land of old extent, was only charters and precepts of *clare constat* by the subjects superior, the Baron of Innerkerthyne and the Earl of Haddington, from 1602 and 1609, down to 1687, with arguments from the book in the low register, as certified by Mr Corse, that the old extent might be proved not only by retours, but also by infeftments, and the former decisions, 10th February 1741, marked by me, under 3d February 1741, Elections of Dumfries-shire was quoted, (No. 4,) though it was admitted that that interlocutor was stopped on a reclaiming bill. We had no answers for the meeting; but Mr Scrimgeour, Advocate, who was a freeholder, was admitted to plead it for himself, and