No. 47. 1747, June 24. COLONEL STEWART'S CASE,—WIGTONSHIRE.

COLONEL STEWART was infeft on his father, Earl Galloway, and Lord Garlies' resignation, and Captain Hay on his brother Sir Robert Hay's resignation, in fee and liferent in their respective lands, excluding their heirs and assignees, and failing them by decease to return to the granters; and in Colonel Stewart's rights he is enabled to burden the lands with L.400 sterling. The objection was, that this was no right of fee, because they did not descend to heirs or assignees, nor could not be sustained as a liferent, because it was but a nominal and fictitious right created to give a vote. We repelled the objection, and sustained both votes.

No. 48. 1747, July 9. ELECTION OF TWEDDALE,—DICKSON OF KILBUCHO'S CASE.

LANDS valued at L.5 in 1659, the one half was feued and confirmed by the Crown, and they possessed *pro diviso* since that time, and it was said there was a legal division without telling us how, but it was not by a retour.—Dickson of Kilbucho got right to one-half from his father, to which Captain Murray, &c. objected on the act 1743. And we found that Kilbucho had no sufficient title.

No. 49, 1747, NOV. 10. KERR *against* REDPATH, &c.

THE case of Redpath was a retour in 1666, retouring both old and new extent 7 merks and 4 (40)d. and the feu-duty 7 merks and 40d.; and Newbigging's case was the same, but that in the feu-duty there were 2s. *in augmentationem rentalis;* the same with Cleland's case, 4th June 1745, and 14th June 1746; and with M'Cara's case, 24th June 1747; and we gave the same judgment. Primrose's case is, that he is by his mother one of three heirs-portioners in a 40 shilling land, and has a disposition from the last vassal, on which he is infeft base. We sustained the objection, *renitente* Arniston in the whole points; and several others voted for the interlocutor in the two first cases only, as they declared, because of the former judgment.

No. 50. 1748, June 7. HOME CAMPBELL *against* SIR JOHN HOME.

FOUND it not competent to the freeholders to judge of the objection against Sir John Home, because the alteration alleged happened before 1st December 1743. 2dly, We found it no good objection againt a proprietor in possession upon a proper title, that there is an expired adjudication and infeftment upon it without possession. We found it unanimously; and by a majority found expenses due, for there was no place here for the penalty in the statute.

No. 51. 1750, June 20. SINCLAIR of Southdun *against* SUTHERLAND of Forse.

SOUTHDUN was refused by the heritors to be enrolled in 1744, and complained to us, but observing that the evidence of his valuation was not clear, did not insist, but applied