powers for it was no redeemable right in the words of the act 12th *Annæ*; 2dly, Though he could not yet James can, as this was an extinction of these powers; 3dly, An apparent-heir may conjoin his predecessor's rights and his own, as if he was apparent-heir in L.300 valuation and other L.300 of his own; and quoted a case in 1745 in the county of Lanark, where we found that an heritor could conjoin his own valuation with his wife's, but not with that of his wife's lands wherein she was only apparent-heir; 4thly, If this renunciation does not make a good vote, then neither would it be good were the father dead; so he should be in worse case than if the right of the whole lands remained still with the father. It carried to sustain the objection and to order Mr Gordon to be expunged. For the interlocutor Milton, Justice-Clerk, Murkle, Shewalton, and I, and Minto in the chair, *sed renit.* Drummore, Strichen, Dun, Kames. My reasons were, that though I thought an apparent-heir might possibly have right to be enrolled, albeit his predecessor could not be enrolled, for example, if the predecessor died before he was a year and day infeft, or being infeft on an adjudication or apprising and in possession, died within the legal, and the apparent-heir after the year and day, or after expiry of the legal, being in possession, claimed, I thought he had a title; but that the apparent-heir could not be enrolled or vote as apparent-heir, on a right that never was in his predecessor, but was acquired by himself; and therefore though he might be enrolled after expiring of the legal, yet if he should acquire a renunciation of the reverser, he could not within the legal vote as apparent-heir, because that right was not in his predecessor. That in this case Archibald's infeftment during his father's life was in my opinion nothing but the figure of a fee because he could take it away at pleasure; but then its validity depended on a condition, and by the father's death without altering, became absolute and simple; therefore upon the father's death the respondent would be entitled to vote in right of his brother's infeftment without any other right than was in his brother; but during the father's life he could not have been enrolled without a renunciation of the father's powers, which never were in his ancestor, and which therefore could give him no title as apparent-heir, and I doubted if an apparent-heir could conjoin his predecessor's valuation with that of his own, for it was not in terms of the act 1681 or the act 16th Geo. II. 3d July, Adhered, and Drummore turned for the interlocutor, as did Kilkerran on the answers.

No. 55. 1753, Feb. 28. COLONEL ABERCROMBY *against* BAIRD.

THIS Gentleman's title to vote was the Crown's charter in the lands of Northfield both old and new tenor thereof, and the lands of Grinley with their pertinents, and which are held of him by Keith of Northfield; and he produced a retour of the vassal's heir (who then held of the family of Marshall) in 1628 retouring the lands of Northfield and part of the lands of Whitefield to 10 merks old extent and 40 merks new. The words, as in the first clause, *Obiit sasitus in totis et integris illis* 10 *mercatis terrarum et Baronæ de Troup vocat. terris de Northfield, cum illa parte terrarum de Whitefield, pertinen. aliquando ad dict. lie mains de Troup.* And in the *valen.* clause, *Et quod totæ et integræ illæ* 10 *mercatæ terrarum de Troup vocat. terræ de Northfield, cum illa parte dict. terrarum de Whitefield pertinen. aliquando ad dict. lie mains de Troup nunc valent per annum* 40 *merc. et valuerunt tempore pacis* 10 *merc.* Objected, first, that this is not a retour of the Crown's vassal but of a sub-

vassal, therefore no evidence of the old extent. Answered, Neither the common law, nor act 1681, nor 16th of the King, make any difference: Both proceed on brieves from the Chancery with the same heads in both, and directed to the same Judge who chuses the inquest, and retours the same in Chancery; and the law knows not two old extents, one for the superior and the other for the vassal. There is but one old extent, whereof we hardly have the date, which remains unalterably the same, being about 50,000 merks in all Scotland; and the inquest erring wilfully would be equally subject to an assize of error in the one case as the other; and as it was the rule of levying the taxation from the Crown's immediate vassals, so it was the rule of their relief from their sub-vassals. The Lords repelled this objection, *renit. tantum* Kames. Objection second, The respondent has no right to the lands of Whitefield part of the lands in the retour. Answered, first, The lands of Northfield are by the retour a 10 merk land without Whitefield; 2dly, Whitefield appears to be only a pendicle of the mains of Troup, and, were it included in the *valen.* clause, could be but a small part of the 10 merks, and Northfield would be much more than a 40 shilling land; 3dly, Though the name be changed it is truly comprehended under the lands in the respondent's charter. He purchased this superiority in 1736 from Keith of Ludquharn, who had acquired an old apprizing and charter on it from the family of Marshall; that Ludquharn claimed no part of the superiority as retained by him, and the vassal, who has possessed that small estate of 1000 merks rent for 300 years, has sold none of the lands in the retour, and owns no other superior but the respondent; and he can prove that the vassal possesses that very pendicle as falling under one or other of the lands in the respondent's charter. Replied, That the first clause in the retour is indeed ambiguous, if Whitefield be a part of the 10 merk old extent or not, but the *valen.* clause puts it out of doubt, bearing that both Northfield and Whitefield *valuerunt* 10 merks. To the second, That no division of old extent can now be made, because of the act 16th Geo. II., nor no evidence of such division admitted, but a retour before 1681. To the third, No matter whether Ludquharn claim a superiority or not, if it is not conveyed to the respondent he has no right to vote. In answer to the first the respondent quoted from Falconer a decision 5th February 1745,* upon a retour of Duke of Lennox, where after stating the old extent of sundry particular land, was added, *cum molendinis de Mewie terris molendinariis multuris, &c. valen. &c.*; the Lords found the mill and mill lands not included in the old extent, and sustained the heritors right to vote though not infeft in the mill and mill lands. But I looked at the case in my prints. It was in Major Colquhoun's, &c. complaint of Campbell of Stonefield, Sir James Livingston, M'Millan and others in Dunbartonshire; and the answer to the objection was, that mills and multure were not extended, nor could not be, unless they had been before the extent was made, which scarce any mills now in being were, and the mill lands were but two acres, and if they were extended, yet they were part of another tenement called Fyvarie which were none of the lands in dispute. And in answer to the second, Lord Advocate put a case, that one infeft in a L.100 old extent had given away a small part, not one-hundred of it, would that lose him his vote? as to which I quoted the case of Hamilton of Westburn in Lanarkshire, decided 19th January and 1st February 1745, who produced a retour of a 20 merk land in 1625, and his own

* DICT. No. 12. p. 8572.

infeftment in the just and equal half of it, and a contract of division in 1671 between the proprietors of both halves, agreeably to which they have possessed ever since, and yet he was found to have no right to vote. The Court seemed inclined to repel both these defences. Only Drummore and Kames seemed to doubt of the first;—but we allowed him proof before answer that these lands of Whitefield were possessed, falling under one or other of the names of lands in his charter, and both parties to prove all facts and circumstances to clear the matter. 22d July, Adhered to the interlocutor touching the retour, and found it proved that Whitefield is part of Northfield, and therefore dismissed the complaint.

No. 56. 1753, Feb. 16, 21. COLONEL ABERCROMBY *against* LESLIE.

THIS was a complaint for admitting Mr Leslie on the roll who was infeft in property in lands valued L.302, and in a superiority of lands belonging to Mr Garden of Troup, upon an adjudication against the family of Buchan as old as 1686, and which lands had been valued jointly with the lands of Troup held of the Crown, and the valuation divided by four Commissioners of Supply at Troup's house, who gave an order on the clerk to divide them so in the Cess books: So two objections were made, first that he had no right to the superiority by the old deserted adjudication which was preserved. But this we unanimously repelled, in respect of the answer that he was infeft and in possession by Troup his vassal, who was infeft on a charter from him, and that the complainer or freeholders had no title to object to his adjudication. Objection second, That four Commissioners privately had no power to divide joint valuations, which by the acts of Convention 1667 and 1678, and act of Parliament 1690, and subsequent acts, could only be done by a general meeting of the Commissioners, either appointed by a preceding meeting, or called by their Convener. Answered, The division was fairly and equally made on a proof taken of the rent of both lands, and the justness of it would appear on comparing it with former valuations of both lands; and the acts did not require a general meeting to divide valuations that had formerly been made jointly. Replied, If four Commissioners had not power, the Court or the freeholders could not enquire into the equality or justice of it; and on the other hand, if the law had given them power, the freeholders could not have altered their act; and that by all the Cess acts the powers therein committed cannot be executed by any without a general meeting, except allenarly the question touching quartering, for which three is a quorum. The Court pretty unanimously sustained this objection, *remit. tantum* Dun.

No. 57. 1753, Jan. 31. March 2. SIR R. GORDON, &c. *against* FREEHOLDERS OF CAITHNESS.

THESE three gentlemen (Gordon, Scot, and Hay) purchased from Sir William Sinclair the superiority of certain lands in Caithness, that had been held by Sir William Dunbar of Hemprigs, of the Earl of Breadalbane, and thereafter by progress of Sir William Sinclair, (which Sir William Dunbar the vassal did not oppose.) They divided the superiority among them three, and got charters from the Crown each of certain parts of the lands, and applied to the Commissioners of Supply, and got the valuation of these several parcels divided, they having been formerly valued not only jointly together, but also