No. 53. ecuted his complaint against John Doull, one of the objectors; afterwards John Doull died, and Sir John petitioned again and obtained a new warrant, which he executed against other two objectors, Mr M'Kay of Bighouse, and Sir John Gordon of Embo; for whom it was objected, that the first complaint was fallen by John Doull's death, and the second complaint was more than four months after the Michaelmas court. But we repelled the objection, and the President thought that no new complaint or summons was necessary, and that the first complaint being duly served on one of the objectors was equal as if it had been served on them all, 4th January 1751. But the same having come again before us, where the objection was, iniquity in the division made by the Commissioners of Supply; the Court was forced to determine the objection to our jurisdiction, that they had so carefully avoided in the decision, Sutherland of Swinzie against Sutherland of Langwell, (No. 52. *supra*;) and they repelled the declinature, and sustained the objection to the division; but the President, who was also of my opinion, had declined himself. (See DICT. No. 79. p. 7345.)

1753. *February* 23.

COLONEL ABERCROMBY *against* JAMES GORDON, Banffshire.

No. 54.

COLONEL ABERCROMBY complained of James Gordon of Ardmellie, who was enrolled as apparent-heir to Archibald his elder brother, who in 1733 was infeft on the Crown's charter on the resignation of Peter Gordon the father, but reserving not only the father's liferent, but also power to him to sell, annailzie, or burden the lands as he thought fit. The father last summer renounced his liferent, and those powers and faculties, to his son James, (Archibald being dead) who in two days lodged his claim to be enrolled as the act 16th Geo. II. directs, and was accordingly enrolled. The complainer objected, That Archibald had no title to be enrolled because of the father's reserved powers, and therefore though the son, now that these powers were renounced, might indeed be enrolled were he infeft, but he could not be enrolled as apparent-heir to his brother. Answered, That notwithstanding the reserved powers, Archibald as fiar had a title to be enrolled, for his right was not a redeemable right in terms of the act 12*mo Annæ*. 2*do*, Though Archibald could not, yet James can, as now these reserved powers are extinguished. 3*tio*, An apparent-heir may conjoin his predecessor's rights and his own to make his vote good, as if the predecessor had L.200 valuation, and himself L.200; and quoted a case in the county of Lanark, Hamil-

ton of Airdrie's, (1745, No. 25.) where we found that a husband could conjoin the valuation of his own lands, and of those wherein his wife was infeft. And 4*to*, Observed, That by the complainer's argument the vote would not be good even were the father dead, and so he should be in a worse case than if the father had still retained the right of the lands. The Lords sustained the objection, and ordered Mr Gordon to be expunged out of the roll, for they thought he could not be enrolled as apparent-heir, unless the predecessor's infeftment entitled them to it without acquiring any new right; and they thought that Archibald's infeftment was only the figure of a fee during the father's life, though upon his death without altering, it would have become simple and absolute; and therefore Archibald upon his death might have been enrolled, but not during his life; and no more could James upon his infeftment alone, without acquiring that renunciation, which is another right; so an infeftment or an adjudication is a title to be enrolled after the legal, but not during the legal; and therefore should such adjudger die within the legal, the apparent-heir may be enrolled after the legal is expired, and that on his predecessor's infeftment without any further right, but not before the legal is expired; and should he acquire a renunciation of the reversion, yet he could not during the legal be enrolled as apparent-heir, because that right was not in his predecessor; and I doubted whether an apparent-heir could conjoin the valuation of his predecessor's lands and his own, because of the express words of the act 1681. (See DICT. No. 177. p. 8801.) No. 54.

1753. *February* 28.

COLONEL ABERCROMBY *against* BAIRD of Auchmedden, Banffshire.

COLONEL ABERCROMBY complained of Baird of Auchmedden's being put on the roll, whose title was a charter and infeftment in the lands of Northfield, both old town and new town thereof, Greenleys, with the pertinents which were held of him by Keith of Northfield; and produced an old retour of the vassal of these lands in 1628, bearing, that *obiit sasitus in totis et integris ill.* 10 *mercatis terrarum et Baronæ de Troup, vocat. terris de Northfield, cum illa parte terrarum de Whitefield pertinen. aliquod de lie Mains de Troup*; and in the *valent* clause, *Et quod totæ et integræ illæ* 10 *mercatæ terrarum de Troup, vocat. terræ de Northfield cum illa pte dict, terrarum de Whitefield pertinen. aliquod de dict. lie Mains de Troup nunc valent per annum* 40 *merc. et valuerunt tempore pacis* 10 *mercas.* The objection was, 1*st*, This was not the retour of the Crown-vassal but of a sub-vassal, and No. 55.