

No. 42. 1745, July 30. SIR ROBERT MONRO *against* M^cKENZIE, &c.—
ROSS-SHIRE.

THE first question was, Whether vassals of the Earldom of Ross, and Lordships of Ardmnach, could vote because of the act of James III. and James VI.; and 2dly, that some of them formerly held of the family of Seaforth; and both superior and vassal were forfeited; and though the vassals purchased their own predecessors estates, yet they did not purchase their superiors estate? We repelled the objection, both because the act of Parliament did not upon the existence of a second son *eo ipso* vest the right in him, and because the respondents were infest, and in possession held of the Crown, in terms of the act 1681.

No. 43. 1746, June 6. SIR MICHAEL STEWART *against* THE TOWN OF
PAISLEY.

THE Lords found the execution against two Bailies was no citation of the burgh, and refused the new execution, because not within the times limited in our act of sederunt, which hindered us from entering into the question, whether communities can vote by a delegate,—but most of us seemed to think they cannot.

No. 44. 1746, June 4, 14. ROBERT CLELAND'S CASE.—LINLITHGOWSHIRE.

CLELAND produced a retour in 1662, *septem bovatarum terrarum de Wester Kincavill*, bearing that *valent L.7. 6s. 8d. nunc, et tantum valuerunt tempore pacis*, and that they hold of the Crown free for payment of L.7 of feu duty, as a proportion of L.26, payable for the whole lands of Kincavill by the ancient infestments, with 6s. 8d. *in augmentationem rentalis pro predictis 7 bovatis terrarum*. The question was, Whether this was evidence of L.7. 6s. 8d. of old extent? which resolved in two questions, 1st, Whether the clause in the act 1681 (distinct from the feu-duties) is repealed by the last act in 1743? 2dly, Whether this appeared to be old extent, distinct from the feu-duty? for which last, the chief argument was, that the retour bore the feu-duty originally to have been only L.7, and the 6s. 8d. was an augmentation, whereas the old extent was always L.7. 6s. 8d. Arniston argued long for the vote, particularly that the act 1743 implied that every person producing a retour, bearing the lands to be 40 shillings, must have a vote. The Lords repelled the objection; and sustained the vote. *Pro* were, Drummore, Haining, Arniston, Dun, Balmerino, Murkle. *Con.* were, Justice-Clerk, Minto, Tinwald, *et ego*. Strichen *non liquet*.—4th June 1745. Altered, 4th June 1746, and sustained the objection. 14th June, Adhered.

* * * The case of M^cCara, 24th June 1747, here referred to, is mentioned as follows:

M^cCara's grandfather was infest in 1648 on a retour in Johnston's fourth part of the lands of Drimmie, *valen. nunc per annum 51s. 10d. cum martis debitis et consuetis, et tempore pacis tantum, cum duplicatione dictæ summæ primo anno introitus, et quod tenetur de*

S. D. N. pro annua solutione dictarum summarum,—and in 1666-7 he was infeft in Henry's quarter, bearing *quod valent 53s. 8d. et tempore pacis tantum*, and that the feu-duty was 53s. 8d. *cum parte martis et devoriis debitis et consuetis, una cum duabus solidis in novam augmentationem rentatis cum duplicatione*, &c. and this respondent stood enrolled as apparent-heir to his grandfather, so that the questions were the same as in Cleland's case, 4th June 1745, and 4th and 14th June 1746, (No. 44.) and we found, as we did ultimately in that case, that M'Cara had no vote.

No. 45. 1746, June 19. CASE FROM ABERDEENSHIRE.

IN this case of Thomas Burnet of Criggie, to whom his father disposed an estate on which he was infeft, held of the Crown, and immediately disposed it back to his father, to be held blench of himself, the Lords repelled the objection, six to five. *Pro* were, Justice-Clerk, Strichen, Kilkerran, Monzie, Murkle, Leven. *Con.* were, Drummore, Haining, Dunn, Tinwald, *et ego*, and the President seemed to be of our opinion. 19th June 1746 Altered, and sustained the objection. *Vide* that date, (as follows :)

A reclaiming bill was advised against our interlocutor, marked 30th July last, in the case of Thomas Burnet of Criggie, which we altered, and sustained the objection against his vote. For this last interlocutor were, President, Drummore, Haining, Dun, Monzie, Tinwald, *et ego*. *Con.* was, Minto. Strichen would not vote. All the rest absent.

No. 46. 1747, June 12. ELECTIONS OF NAIRN.—BRODIE *against*
BRODIE, &c.

AT an election that happened in 1735, in the shire of Nairn, there was a secession of the minority of the heritors, who went to the Sheriff's house, and made an election by themselves, and made a roll of the freeholders, which they ordered to be recorded, leaving out several that were on the other side, and who had voted at former elections, and the Sheriff being on their side, the person chosen by them, viz. Lethem, was returned, and their roll recorded. From that time, there was neither Michaelmas court nor election in Nairn, till the Michaelmas court 1743, after the act 16th Geo. II. regulating these enrolments. There was a petition lodged in Parliament against Lethem's election, but it was allowed to drop, and Lethem sat the whole Parliament. At Michaelmas 1743, Brodie of Spynie, and others, who had been left out of the roll 1735, but had been before enrolled, and never regularly turned out, craved to be admitted to the roll, and it was objected that they could not, in respect they had not produced any titles in the clerk's hands two months before, as the act 16th Geo. directs. However, it carried to enrol them; and Lethem complained to us in November 1743, as he also did of the qualifications of some of them. And this day we found only those who were in the election roll 1735, were constituent members of the Michaelmas meeting 1743, and that therefore the persons complained of could not agreeably to the act be added, without producing their titles as that act directs. *Renit. multum* Arniston, Tinwald, &c. who insisted that the roll 1735 was not a roll made up at an election, though in the minutes it was expressed in the usual form, because of the secession, and that it was made only from memory.