1761. *July* 28.

Mr WALTER STEWART, Advocate, and Others, *against* Mr DAVID DALRYMPLE, Advocate.

No 18.
Extract of a retour from the books of Chancery bears faith, though the principal retour be not to be found there.

In this case several other points were decided.

MR WALTER STEWART, Advocate, Lieutenant James Stewart, William Rorison of Ardoch, George Campbell of Aird, Lieutenant William Agnew, Nathaniel Duke of Leathes, and Captain William Stewart, lodged their several claims to be enrolled as freeholders in the county of Wigton, at Michaelmas 1760, upon the following titles:

For Mr Walter Stewart there was produced, 1. Charter of resignation under the Great Seal, comprehending, *inter alia*, the three-merk-land of Barnkirk, of old extent, with the pertinents, proceeding on a procuratory of resignation, granted by Alexander Earl of Galloway, in favour of himself, and his heirs therein mentioned; 2. Disposition and assignation of these lands by the Earl, dated 9th March 1759, in favour of Mr Stewart in liferent, and the Earl himself and his heirs, &c. in fee, containing an assignment to the precept in the charter; but excepting from the warrandice a feu-disposition of the property of the lands granted to Lord Gairlies, and the infeftment following thereon; 3. Mr Stewart's sasine, dated and registered in proper time; 4. For instructing the old extent of these lands, there was produced the extract of Archibald Kennedy's retour, as heir in special to his father, dated 2d May 1633.

For Lieutenant Stewart, 1. The above charter under the Great Seal, in favour of the Earl of Galloway, containing, *inter alia*, the four-merk-land of old extent of Knockuat, and mill thereof; 2. Disposition and assignation of these lands by the Earl, in favour of Lieutenant Stewart, in the same terms as above; 3. Lieutenant Stewart's sasine; 4. Extract of the retour of Sir John Macdowal of Garthland, as heir in special to his father, dated 23d November 1625, by which these lands were retoured to a four-merk-land of old extent.

For William Rorison and George Campbell, Conveyances of the same kind, of certain other lands, contained in the Earl's charter; and the said retour of Macdowal of Garthland was likewise referred to.

The other claimants also produced writings and title-deeds for instructing their several qualifications, and that their lands were of the valuation and holding required by law.

The whole of these claimants having been rejected by a majority of the freeholders, joined in a complaint to the Court of Session upon the statute of the 16th of his late Majesty. To which answers having been put in for Mr David Dalrymple, who had moved the objections against them in the Court of Freeholders, the following points occurred:

No 18. 1. Order of the Court for serving a complaint may be executed by borrowing up the principal interlocutor, and putting it into the messenger's hands, without extracting.

Objected by the defender, That the warrant of the Court for serving the petition and complaint had not been regularly executed; for, in place of extracting the interlocutor, which was the regular method, the complainers had borrowed up the interlocutor itself from the Clerk, and delivered it to a messenger to be executed: That this was contrary to form, as the orders or judgments of the Court could only be executed upon extracts under the hands of the Clerks; and, were it otherwise, a party might often proceed to execution upon an interlocutor that was afterwards altered by the Court; no messenger, therefore, could safely or legally put any warrant in execution, unless it was ascertained by an extract, that the order or judgment was final.

Answered, The principal order is surely of as great authority as an extract of that order. In this case, the Court ordained the defender to be served with a copy of the complaint, and deliverance thereon, which was accordingly done; and, in obedience to that service, the defender sisted himself in Court, and put in answers; so that the intention of the law, and of the order of Court, was fulfilled. Neither is it unusual in practice, when the party upon whom the order is to be served is on the spot, to borrow the principal warrant from the Clerk, as an authority to the messenger to serve him with a copy of the complaint, and deliverance thereon, which is all that the law requires.

"THE LORDS over-ruled the objection."

2. Whether different complainers can join in one complaint?

Objected by the defender, It is a general rule in law, that different actions, or suits, cannot be accumulated in one libel. Here there are no less than seven complainers, and seven different grounds of complaint, accumulated in the same petition. This is an irregular practice, and tends to produce disorder and obscurity in judicial proceedings.

Answered, This has been the uniform practice of the Court in similar cas of which many instances might be produced.

"THE LORDS repelled the objection."

N. B.—Although the LORDS over-ruled this objection, in respect of some late instances in which the same thing had been permitted; yet, as they were of opinion that the practice was irregular, and might be productive of confusion, an act of Sederunt was made upon the 15th November 1760, (soon after the above complaint was given in,) ordaining, that, in all time coming, each petitioner should prefer a separate petition for himself, without accumulating the complaints of different parties in one petition; as also, that each of these petitions should complain against one defender only, except in cases where more petitioners or defenders may be necessarily connected.

3. Objections not stated in the Court of Freeholders may be insisted in before the Court of Session. No 18.

The defender having, in his answers, stated a variety of new objections, which had not occurred in the Court of Freeholders, the complainers *insisted*, That this was irregular; for that the election statutes had committed to the freeholders the power of judging in the first instance of the qualification of claimants, allowing a competent time for all concerned to consider the claim, and frame their objections. By the statute 1681, the Court of Session is merely a Court of Review, with respect to questions about enrollments, and can only consider the objections and reasons upon which the freeholders gave judgment. Neither does the subsequent act in the 1742 enlarge this power of the Court of Session; and, indeed, it would be unreasonable, that a Court of Review should have the power to alter or reverse the judgment of the inferior Court, though just and legal, or confirm it, though ever so unjust and ill founded.

Answered, It has been the constant usage of the Court to canvass the titles of claimants, and judge of every objection arising from the deeds exhibited, though not stated to the freeholders. In giving judgment, the freeholders determine upon the validity of the titles of claimants in *general;* of course, these judgments cannot be applied to objections stated in *particular*, the question being always put, *Enroll*, or *Not Enroll:* Therefore, the Court of Session, even though considered as a Court of Review, cannot be limited to judge of particular objections formerly made. The claimants, by their petition, submit the validity of their qualifications in general to the cognizance of the Court; and the law must be applied according to the facts and evidence before the Court.

"THE LORDS found it competent to the defender not only to insist upon the objections made at the Head Court, but also upon the other objections now made, notwithstanding the same were not proponed at the Head Court."

This interlocutor being appealed from, was affirmed by the House of Lords upon the 1st April 1762.

These preliminary points being adjusted, the Court proceeded next to consider the particular objections offered to the titles of the several claimants; the most material of which were these following:

4. Objection to a retour, that it only mentioned twelve persons on the inquest, repelled.

Objected to the retour of John Macdowal of Garthland, dated 23d November 1625, That it is null, as it bears only twelve persons to have been on the inquest or jury; whereas, fifteen is the number usually observed; and in no case was ever a less number than thirteen allowed; Skene, *De verb. significat. Tit. Breve de morte antecessoris*, makes the number thirteen or fifteen; Craig, *lib.* 2. *dieg.* 17. § 27. says, 'Hæc autem inquisitio per 15 viros fieri

No 18. ' solet; sæpe per 17, pro rei gravitate; aliquando per 13; sed semper in im-
' pari numero.' In England the number is twelve; nor is an odd number necessary, because unanimity among the jurors is required. With us, where the plurality determines the verdict, an odd number is requisite; but that odd number cannot be less than the even number required in our neighbouring country. Instances, indeed, appear in the books of Chancery, where Juries seem to have consisted of many different numbers, sometimes even, and sometimes odd, without being restricted to any certain rule: But, in these books, the retours are copied without any accuracy; and it can be made appear, that many of the instances alluded to are owing to mistakes in transcribing the principal retour.

Answered for the complainers, 1*mo*, In point of fact, it appears evidently from the extract of the retour itself, as recorded in the Chancery books, that the jurors who passed upon this service were more in number than those whose names appear upon record; and that the seeming defect is no more than an error in transcribing the names from the principal retour into the record, passing over a whole line, which must have contained at least one, and probably three jurors; 2*do*, In point of law, the inquest may consist of a less number than either thirteen or fifteen, though these are the numbers most commonly taken; neither is an odd number absolutely requisite, although it is expedient, in case the jurors should divide in opinion. The brieves upon which these inquests proceed were instituted by King James I. and have one uniform stile, authorising and commanding the Judge to whom they are directed to summon an inquest, without any limitation in point of number, which is therefore left to the discretion of the Judge, to take trial of the facts which are to be the subject of the inquisition. The most ancient authority that occurs upon this point is in the 3d Book of the Majesty, cap. 28. § 3. where 12 are said to be the number requisite. The same thing appears from the statutes of David II. cap. 19.; and Sir Thomas Craig, in *lib.* 1. *dieg.* 8. refers to the constitutions of King Kenneth II. whereby the persons of inquest were allowed to consist of any number from seven upwards. See also § 5. *ejusd. tit et lib.* 3. *dieg.* 2. § 19. Further, it appears from a search of the records of Chancery, that, in the space of ten years, from 1619 to 1630, there are no less than 12 retours having 12 persons on the Jury; 1 of 24 jurors; 2 of 18; 13 of 16; 34 of 14; and 1 of 10 jurors; making, in whole, 63 retours, having an equal number of jurors on the inquest; and there are likewise four instances where the inquest consisted of 11 jurors; so that it is clear that the practice was not confined either to 15 or 13 jurors.

" The Lords repelled the objection."

5. Extract of a retour from the books of Chancery bears faith, though the principal retour is not to be found there.

No 18.

Objected also to this retour; That the principal retour is not extant in chancery, and the copy produced can bear no faith. The attestation by which it is certified, is contrary to the true fact; 'Hæc est vera copia principalis retornatus 'super præmissis in cancellaria S. D. N. Regis remanen. ext. copiat. et collat. 'per me,' &c. This attestation may be just and proper when subjoined to the copy of a retour extant in chancery, which is the case of retours for 100 years past; but, when the retour is not to be found there, no officer can with truth certify, that he gives out a true copy of the principal retour *in cancellaria remanen.* The copy-book of retours in chancery is no record; it was introduced by no statute, but by the clerks of the office for their own convenience. This copy-book therefore bears no faith, and extracts or copies given from it can be of no sort of use. The clerks of the chancery can regularly give no extracts, because they have no record warranted or authenticated by law; but to prevent the danger of losing or throwing into confusion such valuable documents, they have been in use to give out true copies of the principal retours, which, as the parties interested had access to compare them with the principals lying in chancery, have been held as sufficient in judicial productions. Hence the constant stile of the attestation is, 'Hæc est vera copia principalis retornatus;' and it must follow, that if the principal retour is not to be found in chancery, such attestation can bear no faith.

Answered; The record of chancery, by which is meant the book in which the principal services are transcribed, has been received as evidence in all courts, and goes as far back as the year 1547. It is not indeed constituted by any particular statute; but the uniform and uninterrupted practice of receiving it as evidence in the Court of Session, as well as Exchequer, both by King and subject, has authenticated it past all doubt. The very objection which is now made was over-ruled in two cases exactly similar to the present; 5th February 1745, Colquhoun *contra* Freeholders of Dumbartonshire, No 12. p. 8572.; and 19th November 1755, Chalmers *contra* Tytler, No 34. p. 8615.; so that the point is now absolutely fixed.

THE LORDS repelled the objection.

6. Whether a retour is proper evidence of the old extent of lands which appear to have formerly belonged to church-men.

Objected to this retour; That the lands therein contained appear to have been part of the patrimony of the Bishop of Galloway: and as it was a known fact, that the original valuation in the reign of Alexander III. which constitutes the old extent, was only of temporal lands, and did not comprehend the patrimony of the church, the retour in question would not be sustained as legal evidence of the old extent of these lands. The retour certifies, that these lands 'valent 'nunc per annum feudifirma aliaque subscripta, et tempore pacis valuerunt 'summum decem librarum, et quod tenentur in capite de reverendo in Christo 'Patre Andrea Candidae Casae episcopo, pro annua solutione,' &c. The old

No 18. extent was a valuation put upon the temporal lands in this kingdom, as a rule for paying such taxations as should be imposed from time to time by Parliament, for the exigencies of the state. But lands belonging to the church paid tax by a different rule, and were not extended. When any tax was imposed, a proportion was laid on the temporal lands, to be levied by the old extent in pound and merk lands, and a separate proportion was laid upon the clergy, which was levied according to a particular tax-roll kept for that purpose, called Bagimont's roll, which had no connection with the old extent. This appears from the several acts of Parliament imposing the taxations, 1587, cap. 281.; 1621, cap. 1.; 1633, cap. 1.; and the same method continued down to the act of convention 1665, the last act by which any taxation was levied in this kingdom; Stair, Tit. DECLARATOR OF NON-ENTRY, § 3.; Bankton, v. 2. p. 74. and p. 333.; *Skene De verb. significat. voce* BAGIMONT.

Before the Reformation, the vassals of the church neither sat in Parliament, nor elected commissioners to sit there; the church was represented by its dignitaries the Bishops and Abbots; and all the statutes requiring or dispensing with the attendance of freeholders in Parliament, relate to the vassals in temporal lands holding of the King, and not to the vassals of the church. By act 114th, Parl. 1687, the right of electing commissioners to Parliament is limited to those 'having a forty-shilling-land in free tenantry, holding of the King,' which can only apply to temporal lands. After the Reformation, and the general annexation of church-lands, an act passed in 1594, ordaining all church-lands to be retoured to merk and penny lands, that his Majesty might know the owners of them, and that they might be charged with taxes according to such retours; but this act was never carried into execution. The old method of taxing church-lands by Bagimont's roll was still continued; and as no alteration was made in the rule of taxation, so the act 1587 continued the invariable rule for the qualification of voting for commissioners to serve in Parliament, and the church-vassals were entirely excluded, till by act 35th, Parl. 1661, it was provided, 'That besides heritors holding a forty-shilling-land of the King *in capite*, those 'who held their lands formerly of bishops and abbots, and now hold of the 'King, and whose yearly rent doth amount to ten chalders of victual or L. 1000, 'shall be capable to be elected,' &c. By this act the heritors of church-lands acquired a right of voting, not in respect of the old extent, which had no place in church-lands, but in respect of their real value. And matters stood upon this footing till 1681, when an alteration was made, not in the right of voting by extent, but in the amount of the actual rent necessary to give a qualification, which, from L. 1000 real rent, was restricted to L. 400 valued rent, liable in public burdens, whether kirk-lands now holden of the King, or other lands holding feu, ward, or blanch of his Majesty, as King or Prince of Scotland. In all of these statutes, an evident distinction is made between temporal and church-lands, establishing the qualification of the one upon the old extent, and that of

the other upon the valuation introduced by Parliament 1667; therefore the owners of church-lands are not entitled to vote upon extent, but upon valuation alone. No 18.

It is not sufficient for the complainers to say, that as, *de facto*, the lands in question have been extended in this case, and the retour stood unchallenged for a long tract of time, the presumption is, that the jury proceeded on proper evidence. It is well known, that extents, both old and new, are very often erroneously thrown into retours, on occasion of the inquest mistaking the direction of the act 1474, which ordains, that it be answered 'what the lands was of 'avail of the old, and the very avail it was worth the day of serving the brieve;' the one, the old extent, to regulate the payment of taxes; the other, the new extent, to regulate the casualities of superiority. This direction could only be meant as to temporal lands; but could not apply to lands belonging to the church. At the same time, when church lands came into family succession, and were retourable, as the brieves issued for serving heirs were the same in these as in other lands, the jury thought, and still think themselves, obliged to make an answer to each head in the brieve, though, as they can have no evidence of extent where there never was any, it appears they have sometimes erroneously made the feu-duty answer for extent, old and new; and sometimes taken as evidence of the extent the old designations of merk and pound lands, which are found in almost all old rentals of bishops and abbots lands, and which had been given them to ascertain and proportion the services and rents payable by the feuers and tenants.

Answered; By the statute 1681, a forty-shilling land of old extent, of lands then holding of the King or Prince, without distinction whether these lands had, in some former period, belonged to the bishops or other church-men, is made the capital and primary qualification; and, in default thereof, L. 400 of valued rent. Again, by the statute of the 16th of the late King, these two propositions are established; 1*mo*, That the old extent shall be proved by a retour, and by no other mean of proof; 2*do*, That the retour must be prior to the 16th September 1681; and that no division of the old extent, made since that time, shall be the foundation of a title to vote. No distinction is there made between one species of lands and others that then held of the Crown, whether originally Crown-lands, or as having reverted to the Crown by the suppression of the religious houses and abolition of episcopacy; the conclusion therefore is fair, that the law did not intend any such distinction. It does not appoint any inquiry to be made, by what means lands came to get such old extent prior to the 1681; if the extent was ascertained by a retour prior to that date, this was deemed sufficient to stop all further inquiry. The complainers therefore have fulfilled the requisites of the law, by producing a retour of so ancient a date, bearing their lands to be of a proper old extent; and they cannot be bound *post tantum temporis*, to say or prove upon what evidence the jurors proceeded in retouring these lands; Sir George M'Kenzie's Observations upon the act 1681.

No 18.

The complainers do admit, that such lands as belonged to the church at the period of the first general valuation, which constitutes the old extent, were not included in that valuation; but it is incumbent on the objectors to show, that the lands in question made part of the bishop's patrimony in the reign of Alexander III.; otherways the argument will be inconclusive; the presumption is, that these lands were included in the general valuation, unless the contrary can be shown. They may have been temporal lands at that time, and afterwards acquired by the Bishop of Galloway; and though the effect of the original valuation and extent was suspended when these lands were acquired to the kirk, and so long as they remained a part of the patrimony thereof, yet the extent was not thereby vacated; so that when they reverted to the Crown, by the suppression of the religious houses, the old extent of course revived. It appears, from a search of the records, that many lands, which were the patrimony of the church, were retoured, and that these retours contain both old and new extent separate and distinct from the feu-duties. Many proprietors of lands do at present actually stand enrolled in different counties upon retours of this kind.

The lands in question have certainly been retoured before they came into the bishop's possession; for, in the oldest title deed produced, which is a charter as far back as 1566, and in all the subsequent title-deeds, they are constantly described by the old extent; and, no doubt, proper evidence of that extent was laid before the jury, who gave the verdict ascertaining that fact *anno* 1625, although it is now impossible, in the nature of things, to renew that evidence at the distance of 136 years; nor is it necessary, seeing the retour itself is extant, which the law declares to be *probatio probata* of the old extent.

Replied; The oldest rights to these lands show them to have been church-lands; and a presumption is, that they were not contained in the general valuation. The see of Galloway was established 1000 years before the Reformation, and must have been fully endowed before the reign of Alexander III. Besides, supposing them to have been originally extended, this extent was annihilated by the mortification of the lands, and could not revive when they afterwards came to hold of the King; neither could the evidence of that extent be preserved during so long a time, while the lands belonged to the church. It is true, the act of the 16th of the late King admits of no other evidence of the old extent but retours prior to the 1681; but it gives no greater weight to the retour than it would have had before the statute; it does not authorise evidence to be sustained which would not have been sustained formerly, or qualifications to be admitted that were not qualifications previous to the statute; 14th June 1746, Freeholders of Linlithgow *contra* Robert Cleland, No 15. p. 8574.; 24th June 1747, Freeholders of Perthshire *contra* Macara, No 16. p. 8576.

No 18.

" THE LORDS found, that the aforesaid retour was no proper evidence of the old extent of the lands therein contained; and therefore that the complainers, who founded upon it, were not entitled to be put on the roll. To which interlocutor, upon advising a reclaiming petition, answers, and replies, the Court, upon the 2d February 1762, adhered."

But this point having been appealed, the House of Peers, upon the 1st April 1762, reversed the judgment of the Court of Session, and ordered the complainers to be added to the roll of freeholders.

7. No good objection to a retour, that the lands therein contained are retoured, holding of a subject.

Objected to the retour produced for Mr Walter Stewart, That it does not retour the value of the lands holding of the Crown, but of the lands of Barnkirk, which held *in capite* of John Gordon of Lochinvar. In lands holden of the Crown, the Sheriff and the jury were particularly bound to enquire into the old extent, as that was the rule by which the taxation was payable to the Crown. The taxations payable to the Crown were exacted from the Crown's immediate vassals, and they again charged their sub-vassals with relief of their taxations according to no settled rule, but according to their different agreements with their sub-vassals. It is plain, therefore, that the value inserted in retours of vassals not holding of the Crown, can be no proper evidence of the old extent; and for that reason, the act 1661 provides, that only the baron's lands, which hold of the Crown *in capite* to the extent of 40 shillings of old extent, shall be entitled to a vote.

Answered; The act 1474 directs all retours to contain the old and new extent, whether the lands hold of the Crown or of a subject; in both cases, they proceed upon brieves from the Chancery to the King's Judges; in both cases they have verdicts of a jury on oath. Neither does the statute of the 16th of his late Majesty, which makes retours the only evidence of old extent, establish any such distinction as is now contended for, and which, if held to be law, would exclude above one half of the retours in Scotland. Further, this objection was repelled by a solemn decision of the Court; 26th July 1753, Abercromby *contra* Baird, No 33. p. 8605.

" THE LORDS repelled the objection."

8. Superior may divide the superiority without the vassal's consent.

Objected to the titles produced for Mr Stewart and others of the complainers, That the Earl of Galloway, who had only the right of superiority in his person to the lands which he had granted to these claimants, had parcelled out this right of superiority, in order to create the intended votes, without consent of Lord Gairlies his vassal in the lands, so as to introduce five different superiors, in place of one. Such deeds by which a number of different superiorities are created and many superiors imposed on the vassal without his consent,

No 18. are void and ineffectual in law; Craig, *lib.* 2. *dieg.* 11. § 18; Stair, *lib.* 2. *tit.* 4. § 5.

Answered; The objection is *jus tertii* to the defender. The complainers stand infeft in the superiority of their respective lands upon charters from the Crown, whereby they are acknowledged and received the Crown's vassals in these lands; so that, supposing it were competent to Lord Gairlies to challenge the same, no other person has a title to plead in Lord Gairlies's right; besides, there is here no division of the superiority of only one fee, but a distribution of the superiorities of several distinct fees distinguished into separate parcels, each parcel consisting of so many pound and merk lands; and there was nothing to hinder the Earl from alienating the superiority of any one or more of these parcels. And further, in selling a superiority, or any part of it, there is no occasion for the vassal's consent. That a superior cannot interpose a superior between himself and his vassal, is admitted; but that he should be disabled from selling the superiority of any one part unless he dispose of the whole, is warranted by no law. The vassal may sell part of his estate without the superior's consent; and no reason can be assigned why the superior should not have the same privilege with regard to the superiority.

"THE LORDS repelled the objection."

Objection of nominal and fictitious repelled.

Lastly, It was *objected* to some of the complainers, That they had nc property estate vested in them, as they drew no profits from their superiorities; particularly with regard to Lieutenant Agnew, it was observed, that by his charter he was obliged to pay to the Crown of yearly feu-duty L. 24 : 14 : 8 Scots; and from the extent of the sasine of Mr Alexander Agnew, his vassal, it appeared, that he was only entitled to receive from his said vassal one penny Scots of blanch-duty yearly; so that, in place of receiving any profit out of his estate, he was a considerable loser by it. The Court has indeed in some cases sustained qualifications where it appeared that there was a true and real estate vested in the claimant, though of the most inconsiderable value; but Lieutenant Agnew is so far from having any estate, use, or benefit from his superiority, that, on the contrary, he is liable to the King for a great deal more than he is entitled to receive from his vassal; so that, if there is any sense or meaning in the oath required by the statute of the 7th of George II. this case falls under its prohibition.

Answered; 1*mo*, The objection is not founded in fact; for it appears by the conveyances produced, that the vassal is under an obligation to free and relieve Lieutenant Agnew of all feu-duty and other prestations payable to the Crown; so that the question resolves in this, Whether a blanch superiority is not by law a sufficient qualification? which has been frequently decided. 2*do*, There is no relevancy in the objection; for all that is required by law is, that the claimant be publicly infeft, in property or superiority, and in possession of a forty-

shilling land of old extent, holden of the King. It is of no consequence what duty or profit the superior receives out of the lands, or whether it is higher or lower than the *reddendo* which he himself pays to the Crown. If the Crown's vassal should pay L. 100 of feu-duty to the King, and should feu these lands to be holden blanch of himself, his freehold-qualification would be just as good as if, *vice versa*, he held it blanch of the Crown, and had disponed them to be holden feu of himself; 9th January 1755, Forester of Dunoven against Andrew Fletcher, *infra*, *h. t.* No 18.

Observed on the Bench, That this was the strongest intance that had ever occurred of a title purely nominal, and which conveyed no real interest in land; but it had been decided in other cases, that no regard was to be had to the value of the estate, provided the claimant was really and truly vested in the right, such as it was.

" THE LORDS repelled the objection."

Act. *Agnew, Walter Stewart, Lockhart. Ferguson, Advocatus.* Alt. *Garden, Da. Dalrymple,* Clerk, *Pringle.*

J. C. *Fol. Dic. v.* 3. *p.* 403. *Fac. Col. No* 51. *p.* 118.

*** This case was appealed:

The HOUSE of LORDS, April 1st 1762, ORDERED and ADJUDGED, that the said interlocutor of the 10th February 1761 be, and the same is hereby affirmed; and it is further Ordered and Adjudged, that the said interlocutors of the 28th July 1761 and 2d February last, be, and the same are hereby reversed, and that the appellants be added to the roll of freeholders for the shire of Wigton, pursuant to the act of Parliament of the 16th year of his late Majesty.

1761. *July* 29.

PATRICK MACKIE of Barmore, *against* SIR WILLIAM MAXWELL of Monreith, and other Freeholders of the county of Wigton.

No 19.
The objection again repelled, that the principal retour did not appear, but only an extract from Chancery.

PATRICK MACKIE of Barmore having claimed to be admitted upon the roll of freeholders of the county of Wigton, at the general election upon the 23d of April 1761, he, with that view, produced a charter under the Great Seal, in his favour, of the lands of Barhapple, Kenmuir, and Barbuny, together with several other lands therein mentioned, dated 12th February 1740, with an instrument of sasine following thereupon, dated the 1st, and registered the 12th of March thereafter; and an extract retour of Sir Robert M'Lellan of Bombie, as heir in special of Thomas M'Lellan of Bombie his father, dated 27th October 1624, whereby the said lands of Kenmuir, Barhapple, and Barbuny, were