rectly falling under it, that is no reason for extending it further to other subjects. But the cases mentioned by the complainer were no undue extension; for, in the case of Sir Patrick Dunbar *contra* Sinclair, it was only found, that the valued rent of the teinds to which the proprietor of the lands had acquired right, might come *in computo* with the valuation of the lands: And justly; for when the proprietor of the lands had acquired right to the teinds, they ceased to be a servitude or burden on the lands, and the lands became liable for the whole valuation of both stock and teind. But it never was found, that a titular of the teinds of other mens lands was entitled to vote, where the valuation of the teinds exceeded L. 400 Scots. And a right of salmon fishing falls properly under the description of lands, because, by the common principles of law, the channel of a navigable river, as well as all the emoluments and advantages arising from the river, are considered as part and pertinent of the adjacent grounds. No 52.

The arguments with respect to the manner of dividing the valued rent, were the same with those used in the case immediately preceding.

THE LORDS repelled the objections to the complainer's qualification, so far as concerned the division of the valuation of the lands derived from Sir James Stirling; but sustained the objection made to that part of the qualification founded upon the title to the feu-duties payable out of the lands of Bothkennar; and therefore dismissed the complaint. See DIV. 4. § 1. *h. t.*

Act. *And. Macdowall, Ro. Dundas & Bruce.* Alt. *Lockhart & And. Pringle.* Clerk, *Forbes.*
B. *Fol. Dic. v.* 3. *p.* 407. & 408. *Fac. Col. No* 128. *p.* 190.

*** This case is reported by Lord Kames, No 9. p. 2443. *voce* COMMISSIONERS OF SUPPLY.

1768. *March* 10.

WILLIAM DOUGLAS of Bridgetoun, and WILLIAM MILN of Bonnitoun, *against* ALEXANDER ELPHINSTON, Advocate.

No 53.
Objected to a claim, that the division of cess was erroneous, in respect that two *cumulos*, in different parishes, had been conjoined, which ought to have been kept separate.

MR ELPHINSTON was enrolled in the roll of freeholders for the county of Forfar at Michaelmas 1767. Mr Douglas and Mr Miln complained to the Court of Session, of the judgment of the freeholders, enrolling Mr Elphinston, and stated sundry objections to his qualification, and, among others, an objection to the division of the valued rent of the lands upon which he claimed.

The COURT, upon advising the petition and complaint, answers, &c. 22d Jan. 1768, 'Sustained the objection with respect to the valuation of the respondent's lands, and find, that the freeholders did wrong in admitting the respondent, Mr Alexander Elphinston, to the roll of freeholders for the county of Forfar, at

No 53. Answered, This division was made without any political view, and was homologated by payment of cess for 12 years. The objection was sustained in this Court; but that judgment was reversed upon appeal.

Michaelmas last; and therefore grant warrant to, and ordain the sheriff-clerk of the said county to expunge his name from the said roll, and decern; and find it unnecessary to determine the other objections with respect to the validity of the respondent's rights.'

Against this judgment Mr Elphinston took an appeal, and the cause coming to be heard in the House of Peers, the above recited interlocutor was reversed.

How soon the judgment of the House of Peers was known in Scotland, Mr Douglas and Mr Miln gave in a petition to the Court of Session, praying the Court to resume the consideration of the other objections they had stated to Mr Elphinston's qualification, which had not received the judgment of the Court.

Answers were put in for Mr Elphinston, in which it was *contended*, That as a judgment which exhausted the whole cause had been pronounced by the Court, when the question was formerly under consideration, and decreet had thereupon been extracted, the cause was out of Court; so that there was now no depending process; and therefore it was incompetent to resume the consideration of any of the other objections.

THE COURT, 10th March 1768, pronounced this interlocutor: 'THE LORDS having heard this petition, with the answers thereto, and judgment of the House of Peers, they refuse the desire of this petition.'

Pleaded in a reclaiming bill for Messrs Douglas and Miln, There may be many cases where sundry points occur, each of which is decisive of the cause. A defender may have various defences, each of which are relevant to procure an absolvitor, and it would be extremely hard, in cases where the Court give judgment upon one point only, and superseded determining the others as unnecessary, if such judgment should be reversed on appeal, that it should not be in the power of the Court to resume the consideration of the other points of the cause, and to determine the same in favours of the person with whom the merits did truly lie, merely because the decreet had been extracted, which was absolutely necessary for the purpose of discussing the appeal. The House of Peers have no radical jurisdiction in questions such as the present, but is only a court of review; and of consequence cannot take cognizance of points which were not under the consideration of the Court of Session. The extracting of the decreet was not the voluntary act of the complainers; it became necessary in order to discuss the appeal which was taken by the respondent before the reclaiming days were run, and when it was competent for the complainers to have reclaimed against that part of the interlocutor of this Court, finding it unnecessary to determine the other objections; and therefore the cause ought to proceed in this Court, in order to have the other points determined, which had not yet received the judgment of the Court.

Answered for Mr Elphinston, There is no more solid or better founded defence in the law of this country, than that of a *res judicata*. When judgment

is given in any cause, either condemning in, or absolving from the conclusions of the libel, and decreet thereupon regularly extracted, that cause is thereby out of Court, and can never afterwards be renewed upon the same grounds; such after litigation being most justly and effectually barred by the objection of a *res judicata.* No 53.

In the present case, the single purpose of the petitioners action was, to have the respondent expunged from the roll of freeholders; the Court pronounced judgment exactly conform to the libel brought; that judgment was extracted by both parties, and thereby the cause and parties were entirely out of Court; so that the question comes to be, what is the effect of the judgment of the House of Peers? That judgment is no more than a simple reversal of the decree of this Court, and can never bring back into Court a cause, which, by the established law of the country, and forms of Court, was entirely at an end. Had the judgment of this Court been affirmed upon the appeal, it could not have returned here, and so must have been an effectual judgment in favours of the petitioners; and the House of Peers reversing that judgment, ought to be as effectual to the respondent, as the affirming of it would have been to the petitioners. This Court did not supersede, but found it unnecessary to determine the other points; the judgment given exhausted the cause; the petitioners did not demand the judgment of the Court upon the other objections, but rested their plea solely upon the point determined. Had no appeal been taken, neither party could have applied to the Court after extracting decreet; and the judgment upon that appeal, being a simple reversal, cannot alter the case. Had the House of Peers intended that any further procedure should be had in this Court, they would have remitted the cause back, in order that the other points might be considered; but no such remit being expressed in the judgment of the House of Peers, the cause must, in every view, be considered as at an end.

'THE LORDS refused the desire of the petition, and adhered.' See RES INTER ALIOS.——See SUPPLEMENT TO WIGHT, page 50.—See APPENDIX.

For the Complainers, *Ro. M'Queen, And. Crosbie, &c.*
For the Respondent, *Rae, Wight, and P. Chalmers.*

Fol. Dic. v. 3. *p.* 408. *Fac. Col. No* 76. *p.* 132.

1773. *February.* GRANT *against* DUFF. No 54.

THE Court of Session reduced a decree of division of the valuation of the estate of Innes, on this ground, That with regard to a part of that estate, no proper evidence of the real rent had been brought.

The HOUSE of LORDS reversed the judgment, considering it as immaterial, though one parcel should have got a greater, and another parcel a smaller pro-