29th of April last, and did vote in the two instances condescended upon in the complaint, although he is only possessed of L. 83 : 13 : 4 of valued rent: But this will not found the complainers in a claim for no less than L. 40 Sterling. It is submitted to the Court, if he might not maintain, that no more than one penalty can be exacted upon one conviction; at any rate, he can never be made liable for more than one penalty of L. 20 for his having acted at one meeting; and, indeed, the voting for the clerk, and the ascertaining the extent for the salary, cannot be considered in any other light than *partes ejusdem negotii*.

No 94.

As to the demand for costs of suits, there is no foundation for it; the complainers must pay their expenses out of the penalty they recover.

"THE COURT found the respondent liable only in one penalty, and no expenses due."

Act. *J. Boswell.* Alt. *M'Queen.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 410. *Fac. Col. No* 184. *p.* 107.

*** A different decision had been pronounced in 1766, Sir John Gordon against Forbes, also in Gordon against Forsyth, *see* APPENDIX.

1780. *December* 6. WILLIAM BROWN *against* JOHN HAMILTON.

No 95.
A party had obtained a division from a meeting of Commissioners, called by order of court in consequence of the convener's refusal, but without intimation to the freeholders at large. Notwithstanding of an objection on this account, the party was ordered to be enrolled.

BROWN having acquired right to certain lands in the county of Ayr, applied to the convener of the Commissioners of Supply, praying him to call a meeting, for the purpose of ascertaining their valuation. This the convener at first declined to do; but, afterwards, in answering a protest taken against him, he promised to advertise such a meeting, to be held on the 18th of October, *i. e.* two days after that appointed for the election of a Member of Parliament for the county.

Mr Brown concurred in a bill of advocation with some other gentlemen in similar circumstances; and the Lord Ordinary officiating on the bills, 7th October 1780, "in respect there was not time for appointing the bill to be seen and answered in common form, refused to advocate;" but appointed the Commissioners of Supply, or any five of their number, to meet at Ayr on the 12th current, and to proceed directly to divide and ascertain the valuation of the lands belonging to the complainers. A quorum of the Commissioners accordingly met, and found it proved that the valuation of Mr Brown's lands amounted to L. 471 : 5 : 2 Scots; which they ordered to be entered in the cess-books, and certified by their clerk.

Mr Brown claimed to be enrolled at the meeting for election on the 16th; when it was *objected* by Mr Hamilton,

No 95.

1mo, That the meeting of the Commissioners on the 12th was irregular, and, therefore, their decree did not afford sufficient evidence of the claimant's valuation: And,

2do, That the claimant's infeftment having been recorded on the 7th October 1779, and the writ for calling a new Parliament, bearing date the 2d September 1680, he had not been infeft a year before the *test* of the writ; and, therefore, in terms of the statute of the 12th of Queen Anne, was not entitled to be enrolled, so as to give his vote at the election.

A majority of the freeholder having sustained these objections, and refused to enroll, Mr Brown complained to tho Court of Session; and,

With respect to the *first* objection, *pleaded*; From the proof led by the complainer, it appeared that the lands contained in his charter stood valued in the cess-book at L. 471 : 5 : 2 Scots; and the meeting of Commissioners, on the 12th October, having proceeded to ascertain that valuation, precisely in the manner prescribed by the Lord Ordinary, their decree, as certified by the clerk, afforded all the evidence required by law in such cases.

Answered; The Commissioners of Supply cannot proceed, either to divide *cumulo* valuation, or to ascertain the different lands to which such *cumulo* is applicable, except either upon the day of meeting named in the act of Parliament, from which they derive their powers, or at an adjourned meeting, or at a general meeting properly summoned by the convener: So it was determined, 21st Feb. 1753, Abercromby *contra* Lesly, No 6. p. 2437; and 9th January 1754, Cunningham *contra* Stirling, No 7. p. 2438. And the only regular mode of calling such a meeting, is by an edictal citation at every parish church within the county, on a Sunday, given under the authority of the convener; as was decided in the House of Lords, 6th March 1770, Dundas of Dundas *contra* Wardrope of Cult; and the same Mr Dundas *contra* Robert Durham. *See* APPENDIX.

The power of the Court of Session to review the proceedings of the Commissioners is not disputed. But here there was no proceeding to be brought under review. The matter advocated was the exercise of an office, not the sentence of a judge.

Even where there is room for an advocation, an intimation to the Commissioners, and all concerned, is necessary. Nor has the Court been in use to authorise a meeting of any number of Commissioners, without giving to every Commissioner in the county an opportunity of attending. In the case of Malcolm, and others, *contra* The Commissioners of Supply of Kirkcudbright, No 87. p. 8674, the convener was appointed to call a general meeting. In two other cases, Earl of Panmure, and others, *contra* The Commissioners of Supply of Forfar, No 90. p. 8675, and Duke of Gordon *contra* The Commissioners of Supply of Banff, No 379. p. 7674, the collective body of Commissioners had been regularly brought into Court; the convener was ordered to call a general meeting; and it was only upon his non-compliance, that the Commissioners, or any five of their number, were, afterwards, authorised to

proceed in the business. These interlocutors were judicial intimations to all the Commissioners; and it was their own fault if they did not attend. No 95.

But here the Lord Ordinary, *de plano*, and without any intimation, either to the convener, or to the Commissioners at large, appointed a particular day and hour for expediting the business the complainer had in view; and authorised any five of the Commissioners to proceed in the matter. No intimation of this order was made, till the moment that the complainer, and a few of his friends, whom he had called together, were going into the court-house; of course nobody attended, except themselves; the meeting was partial and illegal; and the proceedings must be considered as totally null and void.

Replied; Divisions were formerly in use to be made by any two Commissioners; but, as improper liberties were sometimes taken at these private meetings, the Court found it expedient to check them; and hence the the decisions, Abercromby *contra* Lesly, and Cunningham *contra* Stirling.

The decision of the House of Lords, Dundas *contra* Wardrop, does not prove the illegality of a meeting not intimated on a Sunday. In that question, the proceedings laboured under other more capital defects. The meeting consisted of only three Commissioners; and it was called in name of one, who had declared by letter, that he did not consider himself as vested with the office of convener.

But here the case is very different. The complainer's valuation is ascertained by a full quorum of Commissioners, acting under the immediate authority of the Court of Session; to which an appeal, by advocation, is equally competent for delay of justice, as for iniquity.

Nor was there any occasion for intimating the meeting to the whole Commissioners of Supply, who were not parties but judges. And, accordingly, in the case of Forfar, no such intimation was made or required. But supposing there had been parties interested in the *cumulo*, who were not called, the division would not be void; it would have been reducible, in case they could shew that iniquity had been committed.

Upon this point, some of the Judges thought that an opposite party ought to have been in the field, in order to give validity to the judicial procedure. But, as it was not alleged that the Commissioners had done any wrong, and as they had precisely followed the mode pointed out by the Lord Ordinary, the COURT repelled the objection.

With regard to the *second* objection, *pleaded*; The clause in the act of Queen Anne referred to, is virtually repealed by the act of the 16th of George II. This last statute enacts, 'That no singular successor shall be enrolled, till he 'be publicly infeft, and his sasine registered one year before the enrollment.' By it, the right of being enrolled necessarily implies the right of voting. The roll of freeholders is, in the language of the legislature, the roll of electors; and, setting aside personal disqualifications, every person upon the roll is entitled to vote at an election. Agreeably to this doctrine, the Court determined a si-

No 95. milar case, 17th January 1755, Buchanan of Carbeth *contra* Cunningham of Ballindalloch, *infra*, *h. t.*

Answered; As the act of the 16th of Geo. II. expressly repeals one part, (viz. § 4.) of the 12th of the Queen, it is presumeable that, if the legislature had meant to repeal any other clause of this statute, it would have done so in terms equally explicit. It is, no doubt, a maxim of universal law, that *leges posteriores priores contrarias abrogant.* But a direct repugnancy, or inconsistency, is necessary to the application of this maxim; and, where both enactments can subsist, a repeal of the former is not to be presumed; Blackstone, Introduction, § 3. The act of George II. does not say, that every singular successor, whose sasine has been registrated a complete year, shall be enrolled. Its aim was to limit the right of singular successors in a particular respect; and it is not from thence to be inferred, that another limitation, imposed by a former statute, was meant to be removed. The two statutes are directed to different objects. The first was intended to prevent an improper multiplication of votes at an election; the last to obviate a similar abuse at the ordinary meetings of the freeholders. Both of them have their use; and they are in no shape derogatory from one another.

Upon this point, it was *observed* on the Bench, that a jugdment so long acquiesced in, as that in the case of Buchanan *contra* Cunningham, was not now to be overturned.

THE COURT, therefore, 'found the freeholders did wrong in refusing to admit the complainer upon the roll;' and ordered him to be enrolled accordingly; to which judgmennt they adhered, upon advising a reclaiming petition and answers.

Lord Ordinary, *Covington.* Act. *G. Ferguson et Ilay Campbell.* Alt. *Wight et Crosbie.*
L. *Fol. Dic. v.* 3. *p.* 411. *Fac. Col. No* 3. *p.* 3.

*** The like judgment was given, *eodem die*, in the case of Sir Walter Montgomery-Cunningham, who had obtained a division of his valuation before a similar meeting of the Commissioners.

SECT. VII.

Where the Proprietor has alienated a part of his estate.

No 96. 1766. *January* 17. M'LEOD of Cadboll *against* Sir JOHN GORDON.

M'LEOD of Cadboll stood enrolled on his whole estate valued in the books of supply at L. 1361 : 10s. In the view of creating freehold qualifications, he ob-