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.

No. 55.

therefore no evidence of the old extent. Answered, Neither the common law nor acts 1681, nor 16th Geo. II. make any difference whose retour it is; both proceed on brieves from the Chancery, contain the same heads, and are directed to the same Judge, served in the same manner, and retoured to the same Chancery, and the law does not know two old extents, one for the Crown-vassal and another for the sub-vassal. There is but one old extent which remains unalterably the same, being about 50,000 merks in all Scotland, and the inquest erring willfully would be equally subject to an assize of error in the one case as in the other; and as it was the rule of levying the taxation from the Crown's immediate vassals, so it was the rule of their relief from their sub-vassals. The Lords repelled the objection. Objection second, The respondent has no right to the lands of Whitefield, part of the lands in the retour. Answered, *1mo*, The lands of Northfield are a 10 merk land without the lands of Whitefield. Replied, Though the first clause in the retour be a little ambiguous, yet the second removes all doubt, which bears, that both lands *valuerunt tempore pacis* 10 merks. The Lords inclined to repell this answer. Answered, *2do*, Whitefield appears to be only a pendicle of the Mains of Troup, and were it included in the *valent* clause, could make but a small part of the 10 merks, and Northfield would be much more than a 40 shilling land; and suppose one infeft in L.100 of old extent, should sell off about 1-100 of it, the rest would entitle him to a vote without a retour dividing them before 1681. Replied, No new division of the old extent can now be made, nor no evidence of such division be admitted but a retour before 1681, because of the act 16th Geo. II. The Court inclined also to repell this answer, agreeably to the decision in the case of Hamilton of Westburn, (No. 31.) Answered, *3tio*, The lands of Whitefield, though the name be changed, are truly comprehended under one or other of the names of the lands in the respondent's charter. The vassal has possessed this small estate for about 300 years, held of the family of Marischall, and has sold none of it. Keith of Ludquharn acquired right to the superiority, and from him the respondent purchased in 1736. He does not pretend to have retained any of the superiority, nor does the vassal own any other superior. Replied, No matter whether Ludquharn claims any right to the superiority or not, if it is not conveyed to the respondent he has no right. The Court allowed the respondent before answer, to prove that the lands of Whitefield are possessed as falling under one or other of the names of lands in his charter; and a conjunct probation to both of all facts and circumstances. (See DICT. No. 32. p. 8605.)