MEMBER OF PARLIAMENT.

No. 1. 1738, Feb. 23. ROBERT ROSS, *Supplicant.*

EARL LEVEN, Ordinary on the bills, reported a bill by this Robert Ross for a warrant to the Chancery to issue a commission to the Sheriff to take trial by an inquest for dividing the old and new extent of a large barony, whereof the petitioner has right to only a part, and to ascertain his part of the said extents,—and the bill gave us some ancient precedents from the records of Chancery of commissions issued out by authority of this Court, and retours made upon them. The Lords unanimously passed the bill, and indeed this seems to be the only distinct legal method to divide and ascertain these extents.

No. 2. 1740, Dec. 5. ELECTION OF BERWICKSHIRE AND OF THE MEARNS.

ON these two petitions with the answers to them concerning the proceedings of their last respective Michaelmas head courts, several of the Court being of opinion that these Michaelmas courts were superseded and the powers taken away by the act 12th *Annæ*, notwithstanding of the judgment of this Court in January and February 1734, Dundas of that Ilk against Sharp of Hoddam and other Freeholders of Linlithgow, (not indeed marked by me in this book, but the papers bound in that year's papers letter D,) finding by the last interlocutor that the act 1681 was still in force both for deleting and adding to the rolls; they agreed to hear that point on occasion of these two petitions on Tuesday last, and the hearing lasted Tuesday and yesterday,—when we found that notwithstanding the said act 12th *Annæ* the Michaelmas head courts can still make alterations in their roll of freeholders,—carried by the President's casting vote. *Pro* were Justice-Clerk, Drummore, Kilkerran, Balmerino, Monzie, Leven, and I. *Con.* were Royston, Minto, Haining, Arniston, Tinwald, Dun, Murkle. I had declared my opinion that they could delete, and that they could add only apparent-heirs and husbands in the right of their wives, because of the *proviso* in their favour in the act 12th *Annæ*. But all the rest who spoke of either side were either of opinion that they could neither delete nor add, or that they could not only delete but add both apparent-heirs and husbands and even purchasers. But the Court being much fatigued, the particulars of their power were put off till this day, when such as spoke gave their opinions much in the same way as the day before; only the President explained his, that though he thought new purchasers might be enrolled at Michaelmas, and in consequence of that enrolment they could vote in chusing Preses and Clerk, yet they could not vote in constituting the roll or the election of the member, or any other question, till they had produced their rights in terms of the act 12th *Annæ*;—but I did not observe that any body joined him, such as spoke on that side giving their opinion, that these new purchasers could vote in every step till the election of the member or till they were turned out. But when it came to the question, an objection was made to our powers of judging in these questions, though the preceding day's judgment plainly supposed it. However that previous question was put and it carried by a

good majority, that in so far as the Michaelmas courts were still in force, summary application to the Court of Session was still competent. Then the question was proposed by the President, Whether the Michaelmas courts could add to the roll apparent-heirs and husbands in the right of their wives? but Arniston (for what reason I know not) moved that the first question should be, Whether new purchasers could be added? and it carried in the negative. In this case I was for the negative as I had declared the day before; and Monzie did not vote; but what seemed odd was, that Haining, who had given his vote against their having any power of alteration, now voted that they had power even to add new purchasers. The rest divided as formerly. Last of all the question was put as to the power of adding apparent-heirs and husbands? and it carried by the President's casting vote, that they could be added. Here Haining and Monzie both voted for the power, as I did according to the opinion I gave from the beginning. But something also seemed odd here. Kilkerran who voted for the power of adding new purchasers, yet because it carried in the negative voted against the power of adding heirs or husbands, as a necessary consequence of the former interlocutor. *Vide* Election of Sutherland, (No. 7.) where we found by the President's casting vote that purchasers may be added.

No. 3. 1740, Dec. 11. ELECTION OF BERWICKSHIRE.

THE Lords found there being no particular objection made to the defender continuing on the roll at the Michaelmas court, the application to this Court was incompetent.

No. 4. 1741, Feb. 3, 10. ELECTION OF DUMFRIESSHIRE.

THE Lords agreed that the Privy-Council had no power to dismember or annex counties; and 2dly, that if they had power it was not properly done, being only interponing their authority to a private contract without any word dismembering or annexing *per verba de presenti*, and therefore repelled the objection to the titles of the freeholders in the five parishes of Eskdale, as said to be in the shire of Roxburgh in virtue of the said act of Council.—10th February, The Lords refused even of consent to determine objections that had not been made at the Michaelmas meeting notwithstanding their resolution not to revise the roll except as to alterations since last Michaelmas; 2dly, They found that charters by subject superiors in 1611 on which there was a late retour 1737 bearing the old extent, were sufficient evidence. *Pro* were Drummore, Tinwald, Balmerino, Murkle, and President. Against it were Justice-Clerk, Minto, Leven, *et ego*. These did not vote, Strichen, Arniston, Kilkerran, Monzie.

3dly, As a consequence of the judgment given the 6th instant in the shire of Sutherland, *quoad vide* (No. 7.) finding that new votes may be enrolled, they found that persons infeft though not year and day may be enrolled; 4thly, A charter in 1681 and 1631 in church-lands bearing L.4 of old extent, was found no sufficient evidence of the extent, or that these lands were extended. (See No. 17.)

No. 5. 1741, Feb. 13. ELECTION OF MEARNS.—SIR JAMES CARNEGIE *against* STEUART of Inchbreck.

THE Lords found that there was no sufficient warrant for dividing the property lands reserved to Inchbreck, and the superiority lands disponed to Dr Stuart and Skene, and