No. 10. 1741, July 17. ELECTION OF KINROSS,—BRUCE of Kennet, *Supplicant.*

MR BRUCE of Kennet applied to the Court complaining of the election of Kinross, and of the Michaelmas meetings, that the clerk would not give him an extract of the minutes; but the Court would not receive the application.

No. 11. 1741, July 28. CASE OF SUTHERLANDSHIRE.

IN this case, the Sheriffs and clerks procurators waved the dilatory defence, that the House of Lords had not judged of the election; and upon hearing the cause, the Lords seemed to think that an adjournment was against law; that however, as that was the deed of the freeholders, it could not affect the clerk, who was bound to obey the majority; nor the Sheriff, who was to take his return from the clerk, who in this case was unanimously chosen. But in this case it being alleged, and a proof offered of a previous concert of the freeholders for bribing Sinclair to trifle away the time, and to adjourn till the return of their express from Edinburgh, and that the Sheriff-Depute and clerk joined with them in that concert, we allowed a proof before answer of several matters contained in a condescendence by the pursuer; but several articles were refused.

No. 12. 1741, July 28. CASE OF PERTHSHIRE.

ON a petition of Cunningham of Comrie, complaining that at last Michaelmas the freeholders refused to enrol him, and that he had required them to appoint a diet for attending this Court, and on their failure, had intimated to them to attend this day,—the question was, Whether that intimation was sufficient to bring the freeholders into Court? But the Lords appointed all parties concerned to be served with copies, and to answer ten days after service, as was done in the case of Sutherland. *Vide* 5th December 1740, (No. 7.) The cases were so far the same, that in both cases the complainers intimated a day to attend here. But in Sutherland there was not a formal requisition of the meeting to appoint a day.

Nos. 13 and 14. ELECTION OF BERWICKSHIRE.—HUGH CAMPBELL *against* HOME, &c.

THE Lords found, as in the case of Peebles, 15th July last, (No. 9.) that no action lies upon the act 7th, Geo. against the Sheriff, who returned both the petitioner and Sir John Sinclair. Kilkerran was absent with the gout; but Royston, who was then absent, was present now, and voted for the interlocutor; all the rest voted as marked (No. 9.) The next question was, Whether the clerk had incurred the penalty? and it carried by a majority, not. I was of opinion, that if he returned Sir John Sinclair to the Sheriff as duly elected by the freeholders of the county, that he had incurred it; but observing, that he affirmed in his answers, that he returned to the Sheriff the *res vere gesta*, as recited in these answers, wherein the fact was stated indeed pretty much as it came out, I called