

1749. *December 19.* DAVID SINCLAIR of Southdun *against* CAPTAIN JOHN SUTHERLAND of Torss.

THIS case is reported by *Elchies, (Member of Parliament, No. 20, and Notes.)* Lord KILKERRAN's note of what passed, at advising the petition and answers, is as follows :—

“ 20th June, 1749.—The Lords found Southdun entitled to be enrolled.

“ Several things occurred in this case, as, *Imo*, Whether the meeting would have enrolled the complainer, notwithstanding of the proceedings of the meeting in 1744 ; and some thought they might, because that act of Parliament only provides the method of redress to be by application to the Lords, where the person is unlawfully put upon the roll, but is silent as to the method of redress, where a person is refused to be put upon the roll ; which, therefore, is left the same as was before the act of Parliament, and that was said by an application either to the Lords, or to another meeting. But that was what others would not agree to. So far may be true, that had the meeting, 1744, refused to enroll, in respect the claimant's valuation was not properly divided, should he thereafter obtain a proper division, he might of new apply to another meeting. But, whereas in this case, the meeting 1744, had found certain land-rights then founded on, when in 1749, the very same rights were in another meeting insisted on to be sufficient ; neither before nor after the act of Parliament could that new meeting overhaul the proceedings of the meeting 1744. But there was no occasion to give judgment, because the complaint 1744, being now wakened, the Lords were of opinion that both complaints might be conjoined, and upon the conjoined complaints found as above ; and whereas the letter of the statute was insisted on, to entitle the defender to the L.30 costs, which is awarded by statute where the appellant is cast, which he behoved to be on the present complaint, 1749, though the Court could not as it should be odd that a man should be entitled to be enrolled, and yet pay the L.30 costs ; but then some thought the defender entitled to his real expenses, on the common law ; but even that was refused, for the complainer had no other method than what he has taken to present his right ; not the wakening of the complaint 1744, because then he must have been cast, as his lands at that time were not properly divided ; not the complaint 1749, because the meeting could not reverse the proceeding of their predecessors in 1744 ; and as the two complaints conjoined was his only method, it had been odd to subject him to expenses.”

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1750. *January 2.* LILIAS ANDERSON, Petitioner.

WHEN application is made for having a factor appointed in case of the absence or nonage of the person interested in the subject, and that it happens that the nearest of kin of such person, and to whom properly intimation should be made, is out of the kingdom, the Lords appoint intimation to be made to the nearest of kin within the kingdom.

*Kilkerran, p. 184.*