

of the Forth, being erected to my Lord Thirlstane, he and the Earls of Lauderdale, his successors, had right to the abbot's 40 shillings, due by the burgh of Haddington; and, for sundry years, exacted only the 40 shillings Scots. The present Earl conceiving that his 40 shillings ought to be in sterling money, as well as the burgh-maill paid in to the King, he raises a process against the magistrates of Haddington, for payment of it, at the rate of L.20 Scots yearly, instead of his old 40 shillings Scots; and claims for 39 years back, all above that being prescribed.

ALLEGED for the Town of Haddington,—That though there was a conversion made of the crown-revenue, augmenting it to a decimal proportion, yet that can never operate in favours of the abbot and his successors, who are only private parties; the reason of the augmentation, viz. to defray the necessary exigencies of the government, ceasing *quoad* them. Likeas, the Earls of Lauderdale have so understood it, by accepting 40 shillings Scots, as by their discharges appears. And the appropriation of 40 shillings of their feu-duty to the abbot made it become *juris privati*, and could never be raised to any higher sum, without the Town's consent and approbation; which is not pretended. And, though 40 shillings in our ancient times of frugality went farther than ten times that sum does now, yet that can never burden the Town of Haddington, whose expense has likewise grown proportionally.

ANSWERED,—Their *æqué* in Exchequer is opposed, bearing, That, out of their £15, they get retention 40 *solidorum monetæ onerationis prædictæ*: so the 40 shillings must be of the same specie and value with the L.13 paid in by them to the Exchequer. Likeas, the whole L.15 is originally due to the crown; and the Lords of Erection have only right to these feu-duties under redemption of 1000 merks the chalder; so, they bruiking only in the King's right, it must be all money of the same kind. And though the right of redemption is now discharged by an Act of our last Scots Parliament, in 1707, yet *initium est inspiciendum* that it was redeemable and under reversion at its first constitution.

The Lords found the 40 shillings due to the abbot and his successors must be the same money with that paid to the Exchequer; and so must have the benefit of the conversion and augmentation. *Vol. II. Page 495.*

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1709. February 22. MRS RULE against PATRICK HOME.

I REPORTED Mrs Rule against Patrick Home, writer to the signet. Mr Robert Rule, late minister at Stirling, standing infeft in the lands of Peelwalls, infefts Elizabeth Campsie, his wife, in a liferent-annuity furth thereof, for L.50 sterling *per annum*; whereon she pursues a pointing of the ground against Patrick Home, and the other possessors: Who ALLEGED,—He ought to be preferred, both upon his voluntary right by disposition from her son, as heir, but likewise on his legal diligence of adjudication against the former heirs; especially seeing her husband's infeftment was null, proceeding from the wrong superior, having taken a precept of *clare constat* from Home of Plendergest, in 1676: whereas, the lands of Peelwalls were truly a part of the lordship of Halls, and feued out by the Earls of Bothwell to one of the surname of Rule; and, on the forfeiture of Hepburn, who married Queen Mary, it returned to the crown, and was con-

firmed to them by King James VI. in 1567, and thereafter gifted to the Stewarts, created Earl of Bothwell; and came by progress to the Viscount of Kingston, and from him to Sir James Stampfield; and was acquired, at a roup, by Sir David Dalrymple, who pursued both the relict and Mr Home in another impropriation and nonentry: so that he had no other way to stop it but by offering a charter. And so there can be no pointing of the ground upon her husband's null infestment from the wrong superior.

ANSWERED,—By a charter from King Charles II. in 1663, to Home of Plendergest, upon the resignation of Home of Linthill, it appears Peelwalls is designed a part of the barony of Plendergest. And accordingly the pursuer's husband and authors entered by him, and Renton of Lamberton, who adjudged the right of these lands from him: and so they have prescribed the superiority of thir lands of Peelwalls, by being in possession thereof these 45 years, even since the date of the charter in 1663. And, as the lands holding of Halls, Commissary Home showed no connected progress from the forfeiture of Bothwel, in 1567, down to his own right.

REPLIED,—Plendergest's charter, in 1663, foisting in Peelwalls as a part of that barony, is a gross and palpable mistake: for, *1mo*, Linthill's seasine, on whose resignation it proceeds, makes not the least mention of these lands of Peelwalls, and so he could not transmit them to Plendergest. *2do*, Plendergest is called a 16 husband-land; whereas, if it comprehended Peelwalls, it behoved to be a 24 husband-land, seeing Peelwalls alone was an eighth husband-land: So it is obvious that it is no part of the barony of Plendergest.

The Lords thought both parties should produce what evidences they had to clear who was the true superior. But it was started by some of the Lords, that Mr Home's disposition from the pursuer's son was informed to be burdened with his mother's liferent, and a part of the price retained for purging thereof; which was a homologation of her right, and stops his mouth, that he cannot object this nullity of her husband's being entered by the wrong superior. Therefore the Lords ordained that point of fact to be tried; and in the mean time modified 500 merks to be paid to her, betwixt and the first of April, for her subsistence.

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1709. *February 23.* The CREDITORS of OGILVIE of BOYN *against* The EARL of SEAFIELD.

THE Earl being donatar to the single and liferent escheat of Ogilvies, elder and younger of Boyn; the other creditors raise a reduction of the execution of the horning, the ground of the gift, because it neither bears a copy left nor delivered.

ANSWERED,—This is no nullity, for it bears, “the messenger left a just and authentic in the lock of the door;” and though the word “copy” be omitted *per incuriam scriptoris*, yet it could be no other thing but the copy, and may be supplied as well as the *oyes* may be interpreted to be three *oyesses*: and *authentic* is a word of various signification, according to the subject matter to which it is applied. In the laws of the Code, an authentic there is understood of