A decision had been pronounced, 27th February 1762, to the same effect, and on the same principles, *Orrock* against *Bennet, &c.*, and extending it to tacksmen who had prior tacks.

1776. *December* 14. CHRISTIE, Petitioner for a Warrant from Chancery for Infeftment by the Crown.—*Supplendo Vices.*

THE estate of Elphinstone was sold by the late Lord Elphinstone to certain trustees for Lord Dunmore, who expede no public infeftment, but were infeft base upon the precept. A vassal of the estate, having served himself heir in special to his predecessor, was desirous to complete his title by infeftment. But finding the trustees not infeft public, he raised against them a special charge, in terms of the Act 1474, c. 58, and a summons of tinsel of the superiority; in which he called the trustees and officers of state, the Crown being next superior; and having obtained decreet *in foro*, finding, That Lord Dunmore's trustees had forfeited the superiority for life, and that he was entitled to hold of his next immediate superior, the Crown, he applied to the Chancery for a precept for that purpose, directed to the Sheriff, for infefting him. The Chancery demurred, without a warrant on a bill to the Ordinary on the Bills authorising them to issue such precept. He applied therefore by bill, 14th November 1776. The Lord Alva, Ordinary on the Bills, having reported it, the Lords ordered the point to be stated in a memorial. At first view there appeared a defect in the decreet of tinsel of the superiority; for, as Lord Dunmore's trustees never were infeft public, the application for the infeftment to the heir of the vassals ought to have been made to Lord Elphinstone, with whose heir the feudal right of the superiority still remained. They ordered this point particularly to be stated in a memorial; and, on advising the memorial for Christie, *ex parte*, they refused the warrant. They were of opinion that the Act 1474 did not apply to singular successors, but to the heirs of the former superiors; and, although Mr Erskine seems ambiguous upon that point, see Inst., p. 585, yet Sir Thomas Hope was clear, see M. P. p. 208. They differed as to the effect of the base infeftment: Some thought it gave a title to the superiority, if the vassal consented that a superior should be interposed. Lord Braxfield said he thought it gave no title. And, therefore, as Lord Elphinstone's heir was not proceeded against, nor party to the declarator of tinsel, that the warrant fell to be refused.

1777. *January* 24. SIR LAURENCE DUNDAS *against* The HERITORS of ORKNEY.

IN the question betwixt Sir Laurence Dundas and the Heritors of Orkney, 10th August 1776,—Sir Laurence, *inter alia*, contended, that, in virtue of the grants of Orkney and Zetland, by the Crown, to the Earls of Morton, and

Acts of Parliament confirming the same, and of the after conveyance of these by the late Earl of Morton in his favours,—he had right to enter the vassals of Orkney and Zetland, not only who held of himself, but who held of the Crown. The effect of the grant, as to this, was denied: It was said, no such thing was in the grant, and further, that no such thing could be in the grant, as being unconstitutional. By the law of Scotland, the heirs of the king's vassals fall to be entered upon brieves issuing from and retoured to Chancery, and precept following thereon; and no charter of resignation, confirmation, or adjudication of lands, holding of the Crown, can be given by any other way than under the great seal, and by the advice of the barons of Exchequer, who are constituted commissioners of the Crown for that purpose. And, for this very purpose, power was given to the Exchequer, by the Act constituting the same, immediately after the Union. If the Crown can give such power to Sir Laurence Dundas in the islands of Orkney and Zetland, why may not similar grants be made in every county in Scotland? This would be, not only to repeal the Act of Parliament, but to lodge unconstitutional powers in very dangerous hands, the hands of an individual, whose view might be to manage the elections of the freeholders, by the weight thereby thrown into his arms.

Besides, the whole procedure would be anomalous: a charter under the great seal, of lands holding of the Crown, with a sasine following thereon, has known established consequences. But a charter to a crown vassal, granted by Sir Laurence Dundas, as king's commissioner, and authenticated by his seal, is very anomalous, and nowhere recognised in our law books. In such a case it would be necessary to know where his exchequer, chancery, and seal office were to be kept, and what compulsitors were to be used, in case that he and his officers refused a charter altogether.

All this was redargued. By the very Act constituting the exchequer, the king reserves power to grant charters by a sign manual, and does so daily; What then is to hinder him to appoint another to do it for him: The bailies, in every burgh-royal, are commissioners for the king to grant feudal investitures in that burgh. The Prince, as Steward of Scotland, has his own commissioners. The Act 1601, c. 53, makes mention of bailiaries, or deputations for entering vassals in church lands. Why then should the king be limited to the barons of Exchequer? and why may he not appoint Sir Laurence Dundas to enter his vassals in Orkney and Zetland?

The election laws have nothing to do with this matter; they do not require a charter under the great seal to give a qualification. They only require that the lands shall be of *a certain extent* or valuation, and hold of the Crown; so that a charter granted any person, properly authorised by the Crown, will have this effect.

Upon advising a reclaiming petition, with answers, the Lords adhered.

1777. *January* 24. SIR LAURENCE DUNDAS *against* The HERITORS of ORKNEY and SHETLAND.

IN the same process betwixt Sir Laurence Dundas and the Heritors of Ork-