Edinburgh, her Grace now pursues Mr Hary Scrimzeor of Bowhill, his heir, on the passive titles, for payment, not of the whole debt, but *in quantum lucratus* by his succession to the said Mr David, the debtor; in so far as,—Mr David having made a disposition of his estate to Mr James Melvill of Halhill, and that deed being quarrellable *ex capite lecti*,—Mr Hary, for validating and fortifying the said disposition, accepted of 5000 merks, and granted a renunciation of any pretence he had, in favours of the said Mr James Melvill: And the Duchess insisted only for the 5000 merks which he had got for renouncing her debtor's succession, and extended it no farther.

ALLEGED,—*Esto* he had got a gratuity for renouncing his interest, the same can never infer a behaviour as heir, since he did not prejudge the creditors, nor, by any positive deed, transmit or convey any thing to which he might succeed *jure sanguinis*, as heir to the defunct; conform to what the Lords found, *5th July* 1666, *Scot* against *the Heirs of Auchinleck*.

ANSWERED,—His renunciation was, upon the matter, an effectual transmission and conveyance of the heritage to Mr James Melvill, in prejudice of the creditors: for, the disposition being *in lecto*, either the apparent heir or his creditors could reduce the same; but this renunciation is equivalent to a consent and ratification. And it is *indubitati juris* that the apparent heir's consent validates a disposition made on deathbed: and, if apparent heirs be overtaken on very small intromissions, much more should he be liable, who has got 5000 merks: and it was so found lately betwixt *the Creditors of Laurence Ord* and *John Lightfoot*.

REPLIED for Mr Hary,—He was not bound to dispute, *hoc loco*, what his renunciation would import, and it would never prejudge the creditors' action of reduction of Mr James Melvill's disposition *ex capite lecti*: And, by an express decision in Stair, 19*th July* 1676, *Nevoy* against *Balmerino*, they found an apparent heir's getting benefit by a transaction did not make him liable, unless he had done a deed that communicated the defunct's right, and hindered the creditors from affecting it; which cannot be pretended in this case.

The Lords saw this dipped on the establishing and introducing of a new passive title; which is not to be done without great deliberation; therefore they ordained the cause to be heard in their own presence. *Vol. II. Page* 494.

1709. *February* 18. The EARL of LAUDERDALE *against* The TOWN of HADDINGTON.

THE Lord Justice-clerk reported the Earl of Lauderdale against the Town of Haddington. Of old, when the burgh of Haddington fitted their *æqué* in Exchequer, they paid £15 Scots, as their burgh-maill due to the crown: but, 40 shillings Scots of this being given off by the crown to the abbots of Dunfermline, they paid only £13 Scots to the crown, and got deduction and retention, in their own hand, of the 40 shillings given off to the abbot.

In King James VI.'s reign all these feu-duties were raised and augmented, with the alteration of the value of money, to ten times more than they paid at first: So that, for the £13 Scots of old, they now pay L.130 Scots; each twenty shillings being raised to ten pounds Scots. The abbot's right, on the south side

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 opponed, 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.

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 poinding 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 Haills, and feued out by the Earls of Bothwell to one of the sirname of Rule; and, on the forfeiture of Hepburn, who married Queen Mary, it returned to the crown, and was con-