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 improbation and nonentry: so that he had no other way to stop it but by offering a charter. And so there can be no poinding of the ground upon her husband's null infeftment 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 Haills, 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, 1*mo*, 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. 2*do*, 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. *Vol. II. Page* 496.

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

authentic legislative constitutions; and so of the Scriptures; and, here, what sense can be affixed to this adjective but the substantive *copy?*

REPLIED,—The mentioning a copy is *inter substantialia* of a citation; and hornings, being a penal confiscation of moveables, are to be strictly taken, for the ease of indigent debtors, and not to be extended.

The Lords found it a pure omission; and, therefore, repelled the nullity, and sustained the execution. *Vol. II. Page* 496.

1709. *February* 24. MARY SOMERVILE, and JANET CUNNINGHAM, Petitioners.

MARY Somervile, daughter, and Janet Cunningham, grandchild to umquhile Nicol Somervile, writer in Edinburgh, gave in a bill to the Lords, representing, That young Nicol Somervile, her only brother, went many years ago as chirurgeon to a ship bound for the Indies; and the last accounts they had of him, was a letter to his father from Maryland, in America, *in anno* 1703, bearing, that, his father being now turned aged and infirm, he would, God willing, endeavour to see him shortly. Since that time they have never heard from him, whether he be dead or alive; but fear the worst. That, by his absence, none have a title to manage or intromit with his estate, which consists in houses and bonds; so the same are like to go to ruin or perish, whereby considerable damage has already emerged: and, therefore, craved the Lords may name a factor to set the houses, do diligence for the debts, and manage, either till his return, or some more certainty of his death be got: And which course the Lords took in a parallel case, 12*th July* 1704, *with the Estate of John Dale, Sweden-pursevant.*

The Lords thought this desire reasonable, and appointed a factor; but ordained him to find sufficient caution to make the same forthcoming to all parties who shall be found to have interest. *Vol. II. Page* 498.

1709. *February* 25. SIR ALEXANDER FALCONER of GLENFARQUHAR, Petitioner.

SIR Alexander Falconer of Glenfarquhar represented to the Lords, That he had taken a brief out of the Queen's chancery for cognoscing the Lord Halkerton to be furious and fatuous, by an inquest of fifteen sworn men; and that it would be difficult to bring him to Stonehive, the head burgh of the shire, in respect of his circumstances: and, therefore, craved, that the Lords would authorise the sheriff to hold his court at the house of Halkerton, that he might be there sisted, and presented to the assize.

Though this desire seemed new, yet, the Lords having called for the brief, and finding its style prescribed no place, they granted the desire of this bill. *Vol. II. Page* 498.