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-

ney and Zetland, parties differed as to the meaning of udal lands. It was said, on the part of the Heritors, that udal lands are allodial lands; that they are enjoyed by the proprietors of them *tanquam optimæ maximæ*, without their being obliged to acknowledge any superior; and that their right was simple and unburthened. On the other hand it was alleged, That although the lands called udal lands are held without writing, yet nevertheless they are feudal holdings, and are liable in payment of a yearly duty called *skat*. And, although in a late process between the Earl of Morton, and a number of those udallers, an attempt was made to show that this skat was a tax or tribute, and not a duty paid *in agnitionem dominii*, yet no such thing was made out to the conviction of the Court, and they were obliged to continue the payment of their skat as formerly, *in agnitionem dominii*. See also Bankton, V. I., p. 544; and Erskine, p. 186. See Craig also. And it is worthy of being remarked, that when any udaller obtains a charter in Exchequer, the skat payable by him is made his feu-duty.

But, in arguing this point upon the bench, the Lords seemed generally of opinion, that udal lands were allodial. Lord Hailes, in particular, was of this opinion, and derived the word from the two words *all* and *od*, signifying *plenum vel absolutum imperium*.

With respect to these lands, the Lords, 10th August 1776, found, "That those of them who chose to take written investitures, have it in their option to take the same from the Crown, or from Sir Laurence Dundas, as they shall think proper."

And, upon a reclaiming petition and answers, the Lords adhered.

1771. *July* 26. COPLAND of COLLISTON *against* FRASER of LAGGAN.

BY sundry decisions of the Court, this rule, in the case of non-entry, seems to be established, That, from the citation in a special declarator, the full maills and duties of the lands are exigible, unless the pursuer gives reason to lead the defender to suppose that he has deserted his claim by not following it out effectually, but being dilatory, and allowing the process to fall asleep.

A case of this kind occurred between Mr Spottiswood of Spottiswood and Mr Fraser of Laggan. Spottiswood pursued Laggan in a general declarator of non-entry, which contained also a special declarator and conclusion of maills and duties. (This therefore was a general and special declarator in one, which is very consistent.) But, during the dependance, he transferred his right to Mr Coltart of Areeming and Mr Copland of Colliston, after which the action was allowed to lie over for some years, and to fall asleep. It was afterwards wakened by Colliston, as sole pursuer, and the wakening executed 10th May 1770; and being insisted in, Lord Elliock, Ordinary, 23d November 1770, gave the full maills from the 20th May 1765, the date of the citation in the principal process. On a reclaiming petition, and answers, the Lords, 26th July 1771, in respect that the libel concluded for more than was found due, and that the process was allowed to lie over and fall asleep from 1765 to 1770, found that the pursuer had only right to the full maills and duties from the 23d