

Concerning the casualty of Rollof.

1. We are not here to suppose that King Malcom conveyed to his Subjects all the lands in Scotland, as if he had been sole proprietor or self holder of the country, as the Czar of Muscovy calls him self. It is indeed probable that men of Estates or Lords of manors did at the first Institution of our Monarchy oblige themselves for the support of the Government agreed upon, to pay an acknowledgement to the crown to assist the King with ^{the} counsellors, to serve him in the administration and to maintain his authority by their arms both against foreign enemies and domestic Rebels, and all this in proportion to the Estates they were possess'd of. So that as they invest the King with a sovereignty over persons, they did in like manner clothe him with a ^{superiority} or dominium ^{in re} dirigitum over their Estates, to be hold in his name as the head of the Government. After the monarchy was settled, more lands falling to the Sovereign by conquest, forfeiture of Rebels, or as ultimate heirs; some were annex'd to the crown for the support of the Government; others were reserv'd to be confer'd in the Kings name upon such as merited Rewards for serving their Country. But it is very improbable that the antient Scots would part with the dominium ^{and so of proprietors} or property of their Estates to their King when they first set up on it, so that ~~the~~ King Malcom must be understood either to have given only away his crown lands or the Kings lands among his Subjects, as Buchanan says (Histor. Scot. Lib. 6.) In lieu where of they gave him the ward and Rollof of their Heirs; or he must have prevailed upon them by that distribution, to change their antient tenure, what ever it was, into that of ward holding.

Concerning a Scots peer made an English peer since the union.

1. Queen Anne by Letters patent dated 26 May in the seventh year of her reign created James then Duke of Queensberry (the present dukes Father) Baron of Rippon, Marquis of Berberly, and Duke of Dover, to hold these Titles and dignities to him for life, and afterwards to his second Son Charles (the present Duke) then Earl of Sulloway in Scotland, and the heirs male of his Body, Remainder to the third Son George Douglas and the heirs male of his Body, Remainder to the fourth Son in last male Succession, the oldest Son of the said Duke being an Idiot and therefore passed by in the patent). In pursuance of this patent a writ issued to summon the said Duke to the parliament, who was accordingly 19 Novem^r 1708 introduced into the House of Lords, where he took his seat and continued to sit and vote in two successive parliaments, during the Infancy, i.e. minority of the present Duke, who coming to age petitioned the King to cause a writ of Summons to be issued to him for his coming and voting in parliament, and upon the 28 Decem^r 1719 his majesty referred to the House of Peers to take the petitioners claim and Right into consideration, and to do and determine thereupon what should be found just and Right, upon this the House gave Sentence that the present Duke of Queensberry should be heard at the Bar of the House by his counsel. The difficulty was that in the said Duke of Hamiltons case of 20 Decem^r 1711 it was resolv'd by the Lords, that no patent of honour granted in any peer of Great Britain who was a peer of Scotland at the time of the union should entitle him to sit in parliament. This Resolution was founded on the construction of the Articles of the union of the two Kingdoms of England and Scotland. 5 Annæ cap. 19. After which union the patent of the Dukedom of Dover was granted to the Duke of Queensberry in manner above mentioned. The Articles of union affecting this case were the 9th, 22^d and 23^d. It was urg'd in favour of the petitioner, that in these articles it was difficult to find out words which could be thought to disable the King from granting to a Scots peer a patent of peerage of Great Britain, with the privilege of sitting in parliament, or which disabled a Scots peer from accepting such a patent. Especially when the Rule of Law was (and it was a Rule without exception) that the prerogative of the King, of which the Law was so careful could not be taken away by any act of parliament without plain and express words, more especially so valuable a part of the prerogative where by the crown was enabled to encourage the merit of the Subjects by bestowing on them honours and Titles. The words of the articles seem so far from importing any such disability, that there is not so much as a negatve in any of the articles; there is indeed what seems to be the Reverse of such construction the fourth article saying that there shall be a communication of all Rights and privileges between the Subjects of either Kingdom except where it is otherwise expressly agreed by the articles. And there is nothing express'd to the contrary in any of the Articles. Tho' by the Treaty of union only Scotland was to represent the peers of Scotland: yet this doth not hinder, but that by Letters patent more peers might be created. could it be intended by the above mentioned articles of union, that these Scots peers should be in a worse condition than the meanest of their fellow Subjects; nay the meanest of their own servants; in a worse condition than those who are no Subjects, but aliens; nay worse than Criminals; since by such construction of the articles all these things