

No 43.

dishabilitated, when the King granted the Earl of Home's right, so that there could be no demission, the King being in the commendator's place, and could not demit to himself, the dishabilitation at least was equivalent to a demission, though it had been necessary, as it was not; for albeit *de facto*, the King erected upon demissions, yet that he could not, after the abbot's death, have erected it, or provided another, or even during his life, reserving his temporal provision, there could be no doubt, else the demission of a liferenter or administrator could never give the King right of fee, which the resigner had, and here, the King had the right of fee, but not the resigner.

Yet the LORDS found, that seeing all erections by custom proceeded on demissions, that the Earl of Home's not proceeding so, and John Stewart's proceeding upon his demission, was preferable, and therefore repelled the defence.

It was further *alleged*, That John Stewart had ratified the defender's tack. It was *answered*, That was but personal, and could not be relevant against the defender, being a singular successor. It was *answered*, That the pursuer's interest being but for relief, the defender could satisfy, and pay the interest, upon assignation, and so his singular title not being absolute, might be so purged.

Which the LORDS found relevant.

Fol. Dic. v. I. p. 530. Stair, v. I. p. 366.

1680. June 10.

The EARL of PANMURE and FORBES of Monymusk *against* MENZIES of Pitfoddels.

No 44.

THE LORDS found the feuers of Abbacies were only liable for the feu-duties contained in the ancient feu-charters granted by the abbots to them, but not to relieve the Lord of erection of any part of the blench-duty payable by him to the King, unless they have expressly burdened themselves with the said relief in their late charters; because the Lord of erection is liable for the blench-duty, merely upon account of the erection granted in his own favour, which cannot prejudice the anterior vassals.

Fol. Dic. v. I. p. 530. Fountainball, MS.

1699. February 8. EARL of ABERDEEN *against* FORBES of Auchorties.

No 45.
Although
Lords of
Erection after
1633 were no
more superi-
ors, and had
only right to

IN the competition between the Earl of Aberdeen and Forbes of Auchorties, the case was, the feu-duties of these lands belonged anciently to the Abbacy of Arbroath. That being erected in favours of the Marquis of Hamilton, he conveyed them to Urquhart of Meldrum, who, by a simple disposition, first transmits them to Forbes of Auchorties, and afterwards by resignation to the

Earl of Aberdeen, who thereon takes infeftment, and contends on his right. Auchorties *alleged*, That the Lords of Ereccion, since the surrender to the King, and the act 10th Parliament 1633, are no more superiors of the kirk-lands, but have only right to the feu-duties by reservation, ay and while they be redeemed from them, and so need not infeftment to their conveyance, but are sufficiently transmitted by simple disposition and assignation; else the vassals of these kirk-lands should have two co-ordinate superiors, contrary to analogy of the feudal law. *Answered* for the Earl, That the practice of all the Lords of Ereccion, since the surrender, has sufficiently explained this doubt, for they have all conveyed by resignation and infeftment; neither is this the setting up of two superiors, for their infeftment is only for security of these feu-duties till redemption; and if a naked assignation were sufficient to convey these duties in the *reddendo* of the Abbot's charters, it would brangle many of the transmissions and settlements by infeftment, which others thought necessary to expedite. THE LORDS, by a narrow plurality, found the disposition alone did not convey sufficiently, and therefore preferred the Earl of Aberdeen's infeftment, though posterior.

Fol. Dic. v. 1. p. 530. Fountainhall, v. 2. p. 42.

S E C T. IV.

Superiority of Kirk-lands annexed to the Crown.

1662. June 27. Mr DAVID WATSON *against* Mr JAMES ELLIES.

MR DAVID WATSON having acquired right to the superiority of Stenhouse Mill, pursues the feuers for their feu-duties; who *allege, first*, No process, the lands in question being kirk-lands dispooned to a Lord of Ereccion; and, it is declared, that the Lords of Ereccion having only right to the feu-duty till they be redeemed by the King at ten years purchase, by the act of Parliament thereanent in 1633, c. 10. and thereby none have right but such as subscribed the submission, surrendering their interest in the King's hands; until the pursuer instruct that his author did subscribe the said submission, he hath no interest. *2dly*, Absolvitor from the feu-duties 1650 and 1651, because the lands were wasted these years by public calamity of war. *3dly*, Absolvitor from harrage and carrage, because all services are reserved to the King, by the said act of Parliament.

The LORDS assoilzied from harrage and carrage, but differed for the feu-duty, being small, and found no necessity for the pursuer to instruct, that this author did subscribe the surrender, after so long time, but that the same was presumed for his so long bruiking the fee.

Fol. Dic. v. 1. p. 530. Stair, v. 1. p. 116.

No 45.

the feu-duties by reservation till redeemed, yet a disposition alone did not sufficiently convey, and therefore an infeftment, though posterior, was preferred.

No 46.

By the act of annexation 1633, the right of such superiors only was reserved as subscribed the surrender. After a long time it was presumed it had been subscribed.