

‘torum recipiendi, et desuper nova infeofamenta concedendi, a nobis habentium, tanquam in manibus nostris immediati legitimi superioris earundem, in favorem, proque infeofamento dict. terrarum et juris patronatus dict. hospitalis hospitii, in quantum ad easdem spectat,’ &c.

*Objected* ; Mr Budge’s right to the superiority of these lands, depends on the truth of the proposition laid down in the charter, that the superiority by law belonged to the patron, which fails in two respects ; for, *first*, The 54th act, Parl. 1661, on which this is pretended to be founded, does not relate to hospitals ; and, *2dly*, This statute only provides, That the vassals of benefices, who were put to great inconveniencies by not knowing their superiors, might take infeftment from the patrons, but did not divest the true titulars of their right.

*Answered* ; The patronage of this hospital appears as early as the year 1540, in the persons of the Earls of Caithness, who probably founded it to be holden of themselves, reserving the patronage.

In 1560, a feu of the lands in question was granted by the master of the hospital, which coming into the person of Toftingale, he was pursued by the patron as superior, in virtue of the act 1661, in a reduction and improbation, wherein the title was sustained, and he obliged to take a day ; and on this he was advised to purchase the superiority of his own lands, which he did, and is infeft under the Great Seal.

The act of Parliament ought to be interpreted in the most beneficial manner to patrons taking up the superiority in virtue thereof, as it interferes with the right of no third party ; and it would be absurd for the vassals to hold their lands of them, if they did not hold them themselves. If the patron is not superior, nobody is ; for the titulars are no longer ; all that is reserved to them being the profits and emoluments, which may easily be separated from the right, as in church-lands.

THE LORDS considered that the claimant was infeft under the Great Seal, and nobody appeared, who, as master of the hospital, or otherwise, might dispute the superiority with him ; and therefore thought the freeholders had no interest to contest his title to his estate.

THE LORDS repelled the objection.

Reporter, *Lord Minto.*

Act. *Ferguson.*

Alt. *W. Grant.*

*Fol. Dic. v. 3. p. 430. D. Falconer, v. 1. p. 86.*

1750. June 20.

SINCLAIR of Southdun against SUTHERLAND of Forse.

No 221.

DEBATED, but not determined, whether a meeting of freeholders can overturn the proceedings of a former meeting.—See APPENDIX.

*Fol. Dic. v. 3. p. 430.*