

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.*

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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.