

- No 50. which declares that the King has right to the superiority of all kirk lands erected in temporal Lordships, at or before the annexation of kirk lands in the year 1587, reserving to the Lords of Erection the right to the feu-duties ay and while they be redeemed, which does not in the least concern or prejudice mortifications or poor donations, which falls under the exception contained in the act of annexation; and the pursuer could not prescribe a right holding of the King, seeing he and his predecessors were always in use to pay these feu-duties to the town. THE LORDS, in regard the pursuer was infest upon the charter granted to him by the King before any infestment in favours of the Town of Brechin, upon the gift of mortification to them, found and declared that the pursuer holds of the King, and that the Town of Brechin has only right to the feu-duties as patrons of the chaplainrie of Coldhame.

Sir P. Home, MS. v. 1. No 167. p. 248.

1686. *January 15.*

SIR WILLIAM HOPE of Craighall *against* WATSON of Etherny.

No 51.

ETHERNY holding some kirk-lands of Craighall, which were of old a part of the Abbacy of North Berwick, and having given bond for L. 600 Scots as the composition for his entry; he suspended on this reason, that by the 10th act 1633, annexing the superiority of kirk-lands to the Crown, the King only was his superior. *Answered*, That Sir John Home had resigned these lands to be holden of the Lord of Erection; and that, by the 53d act 1661, a consent of the vassal to hold of an interposed superior is sufficient; *ergo*, a resignation must be declared much more so. *Replied* by the King's Advocate, for the King's interest, That the close of that 53d act reserves to the King all his casualities; *ergo*, the entry is still his. THE LORDS found the reservation in the end of the said act, was only of the King's right of redemption of the feu-farms and casualities at nine years purchase, but not of the casualities themselves during the not redemption, for that would have been *repugnans in adjecto*, and a clear contradiction to the rest of the act; and therefore found the letters or. deily proceeded in favours of Craighall.

Fol. Dic. v. 1. p. 531. Fountainball, v. 1. p. 392.

1688. *July 19.* LORD DUNFERMLINE *against* SIR ROBERT DUNBAR.

No 52.

IN the reduction and improbation at the instance of the Earl of Dunfermline, as come in place of the prior of Pluscardin, against the vassals of the priory,

Alleged for the defenders; By the annexation 1633, the superiority of all kirk-lands, as well those erected before the annexation 1587, as thereafter, are annexed to the Crown, whereby the defenders became truly vassals to the King, and the Lords of erection have only right to the feu-duties till redemption, and so the defenders need not produce their rights to the pursuer.

No 52.

Answered for the pursuer; The priority of Pluscardin is excepted in the annexation 1587, and erected in favours of the pursuer's predecessors; and it is not expressly comprehended in the annexation 1633; 2. The act 53d Parl. 1661. declares all persons who consented to be vassals to the Lords of Erection, excluded from the benefit to hold of the King; and *ita est*, the defender's predecessors gave such a consent to the pursuer's predecessors.

Replied for the defenders; The act 1633 annexes all without distinction, and so includes the priory of Pluscardin; 2. The consent mentioned in the act 1661, is a consent since the act 1633, and the consent founded on by the pursuer is in *anno* 1612, long before the 1633.

"THE LORDS sustained the allegiance made for the defenders."

Fol. Dic. v. I. p. 531. Harcarse, (SUPERIORITY.) No 942. p. 265.

1700. February 29.

ROBERT ROSS *against* VASSALS.

ROBERT ROSS of Auchlossan, as infeft in the barony of Drem by the Earl of Haddington, pursues sundry vassals of the temple-lands thereof, both in a reduction and improbation and for declarator of non-entry. *Alleged*, These temple-lands, being of the nature of kirk-lands, they are annexed with the rest to the Crown by the 29th act, 1587, and so the King being their superior, there can be no process either for non-entry or reduction at Auchlossan's instance. *Answered*, Temple-lands are altogether different in their nature and original from kirk-lands, for they belonged to a military order of knights erected for war, and they behoved to be gentlemen by name and arms, of a noble progeny, and lawfully begotten within the kingdom, and who were fit to carry arms; and it was conferred by the master of the order with consent of his knights; templars, *pleno jure*, and as having *omnimodam potestatem donandi, &c. 2do*, The preceptor of the order sate *inter proceres regni* in Parliament, and not amongst the ecclesiastics. *3tio*, It was suppress long before the other kirk-lands, and resigned *ad perpetuam remanentiam* by Sir James Sandilands of Torphichen, the last preceptor, in Queen Mary's hands. *Replied*, They were under the same vow of chastity with other clergymen, and were erected to defend the Christian religion against the Turks and other infidels. THE LORDS demurred, and superseded to give answer till the next Session, though it is generally held not to be kirk-lands.

No 53.
Found that temple lands are not church lands, nor annexed to the Crown by the general act of annexation.

The vassals of the temple-lands farther *urged*, that they were kirk-lands, for they were granted to support and protect the popish religion, and their pil-