tion would make mention, that the lands pertained, and were of the principality. See PRINCE OF SCOTLAND. No 19.

Alt. *Hope & Stuart.* Act. *Aiton & Nicolson.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 442. *Durie, p.* 218.

1627. *January* 25. STUART *against* FEUERS of Coldingham.

No 20.
A Lord of Erection coming in place of a prelate, was not debarred from demanding production of writs affecting the benefice, by the party's showing a right from a former prelate prior to the erection.

In an improbation at the instance of John Stuart, and certain of his creditors who had obtained heritable right from him of the lands and teinds of Coldingham for relief of their cautionry, and which were erected to the said John in a barony, and united in his charter granted to him by the King, against the feuers of the lands, and tacksmen of the teinds of Coldingham; the said John Stuart being debarred *ab agendo* by horning; and the other pursuers who had base rights to be held of him, being quarrelled in their right, because their sasine was given at one place, the lands and teinds lying far discontiguous, and which sasine proceeded from a warrant of charter and precept given only by the said John Stuart, not confirmed by the King to them; whereas it was *alleged*, That no subject had power to appoint such unions, or to dispone lands to any other after that manner, ordaining a sasine at one place to be sufficient for all the lands lying discontiguous; this allegeance was repelled, in respect of the union given to the said John Stuart, their author, by the King, and that he gave it to the pursuer as he had the same himself; so that it was not an union made by a subject, but flowed from the King. It being likewise *alleged*, That the base sasine given to the pursuers by John Stuart, to be held of himself, could not be a ground to furnish action to the pursuers (John Stuart's self being debarred by horning) to call for improbation of these defender's writs, who were vassals of the lands as he was, and that one vassal could not have this action against another vassal; this exception was also repelled, seeing this action affirmed the other vassals to have no right, but that the same, if any they had, was false; and so their rights falling, the pursuers remained proprietors and vassals of the whole lands. It being also *alleged* for Blackader, one of these defenders, that no process ought to be granted against him for the writs of the lands, for the which he was convened, because his right flowed from the Earl of Murray, regent, who was his author, and whose heirs of provision, mentioned in his charter of the same, were not called, who behoved to be found necessary parties in this action tending to avert his right; this exception was also repelled, because that person was called who was heir of line to the Earl of Murray, and he who represented the heir of provision concurred and assisted the pursuit. See BASE INFEFTMENT.

Act. *Craig.* Alt. *Belshes.* Clerk, *Gibson.*

No 20. *February* 7.—In this improbation at John Stuart's instance, whereof mention is made, January 25th 1627, in which the title of the pursuit was an erection granted *anno* 1621, erecting the barony of Coldingham to the pursuer, with an act of Parliament then made in his favours, rescinding all acts of Parliament done before that act, which might prejudge the pursuer's provision which he had to the abbacy of Coldingham; and the defenders *alleging*, That the lands of this abbacy being annexed to the Crown, *anno* 1592, they had acquired infeftment of their lands, by virtue of that annexation, before this right of erection granted to the pursuer, and before this act of Parliament, which infeftment preceding his right of erection, was sufficient to exclude the pursuer's posterior right, that the same could not give him right to pursue this improbation, or to seek production of any other writs of the lands contained in the infeftment foresaid, made to the defenders, or their predecessors, so long as that infeftment stood, and was not improven; for they *alleged*, That the said infeftment being prior to the pursuer's title of erection, and granted to them by the King's Majesty, who is author of the pursuer's right, and so both the parties rights being *ab uno auctore*, and the defenders first, the same was sufficient to exclude the pursuer, while the said infeftment were improven, as said is: And where the pursuer clad himself with the title of the act of Parliament, restoring him against all deeds done before, prejudicial to his provision of that abbacy, which he was provided to before the Annexation of Coldingham, the defenders *answered*, That that act ought not to prejudge particular parties, who were not called thereto; likeas in that same Parliament, where that act was made, the act *salvo jure cujuslibet* was made, which provides, that other parties shall not be hurt by such private acts. Attour that private act of Parliament, in favours of the pursuer, is but a gracious rehabilitation, which cannot extend to prejudge any other anterior rights granted to parties not called thereto, especially where their said rights depend upon a fundamental law, viz. The annexation of that whole abbacy to the Crown, which could not thereafter be taken away in favours of any particular party to the hurt of another who had acquired right, conform to that law; and the said posterior act being *ex gratia*, as said is, and only rescinding preceding acts, so far as they might be prejudicial to the pursuer's provision to the abbacy, which he had of the same, before the annexation; therefore they *alleged*, That this provision should be produced, otherwise the act could not be respected in the defender's prejudice; and it was further *alleged* for one of the defenders, That he had right from the heirs of the Earl of Dunbar, of the lands of which Earl of Dunbar was infeft therein, after the said annexation; likeas by a special act of Parliament, before the pursuer's act of Parliament and erection, the same lands were specially dissolved from the Crown, and disponed as said is, whereby they ceased to be a part of the abbacy, and consequently the pursuer can have no

title nor interest to call for production of the same. All these allegeances were repelled, and the pursuer was found to have good interest by virtue of the said erection and act of Parliament, to call for production of the writs of all the lands and others contained in his said erection, seeing the said posterior act did restore him against all other preceding acts, done in his prejudice; neither was he found to be excluded from this pursuit by the preceding infeftments granted to the defenders depending upon the act of annexation, because this case in prelacies and kirk benefices is found by the Lords to differ from cases betwixt laicks, in secular and temporal lands, where usually a right of the defender, before the pursuer's right, excludes the pursuer from seeking of production of any further while that be improven, but in lands belonging to benefices it is not so, where a titular, or prelate, or Lord of erection, who comes in the place of the prelate, is not debarred to seek production of all writs of any thing belonging to his benefice, albeit the party should show a right given to him by another prelate before the provision granted to the pursuer; but here it is to be considered, that this pursuit was for production and improbation, and touched not upon that point, if the said infeftments alleged upon by the defenders were sufficient, whereby to bruik the lands or not, or if the pursuer's right was better than their said right, which point was not here drawn in question in this dispute, but reserved to its own time. No 20.

Act. *Stuart & Aiton.* Alt. *Nicolson & Belshes.* Clerk, *Gibson.*

Durie, p. 263. *and p.* 268.

1627. *January* 31. LAIRD of Lauriston *against* His VASSALS.

No 21.

IN an improbation of the Laird of Lauriston's, it being *alleged*, That there could be no writs produced, made to one Duddingston and Sanderson, because there was none called to represent the said persons; it was found, That there was no necessity thereof *post tanti temporis intervallum*, except the defenders would condescend upon some who might in law succeed unto them; as had been decided before in an improbation of the Earl of Winton's against the Laird of Corstorphin.

Spottiswood, (IMPROBATION.) *p.* 165.

*** Auchinleck reports the same case.

IN an improbation, the heirs, or apparent heirs of such persons whose heirs cannot be known, are not necessarily to be summoned, except the defen-