

1664. June 24. Laird of PRESTON *against* NATHANIEL EBRED.

No 47.

Kirk lands having been annexed to the Crown by act 1633, a Lord of Erection was found not entitled to insist as superior, in an action of reduction and improbation, against vassals, even with concurrence of the King's Advocate.

THE Laird of Preston pursues reduction and improbation against Nathaniel Ebred of all his rights of certain lands. The defender *alleged* absolvitor, because the lands in question are Abbay lands, erected in a temporal holding in favour of Preston; and therefore, by the act 10th Parliament 1633, all such lands are annexed to the Crown, and the feu-duties are only found due to the Lords of Erection ay and while they be redeemed, which is repeated in the 30th act of Parliament 1661, and therefore the pursuer not being superior, but the King, he has no interest to improve or reduce. The pursuer *answered*, That he opposed his infestment of the lands holden of the King with the King's advocate's concurrence. The defender *answered*, That the advocate's concurrence was but *ex stilo curiæ*, and he could make no concurrence sufficient for any improbation and reduction without the King's special order.

THE LORDS found the defence relevant, and assolizied. At which time it was remembered, that Sir Thomas Hope insisting in an improbation of his good-son, the same was not sustained, because it wanted the King's express order.

*Fol. Dic. v. 1. p. 530. Stair, v. 1. p. 204.*

1669. July 14. Duke of HAMILTON *against* The Laird of BLACKWOOD.

No 48.

A right of superiority of Kirk-lands found good, granted any how, tho' not *legitimo modo* by dissolution, because, although the consent of the vassal be necessary, dissolution would be valid without the vassal's consent.

The taking infestment from a Lord of Erection, was found not to import a consent to become his vassal for ever. The

THE Duke of Hamilton pursues the Laird of Blackwood, that it may be declared that he is his vassal in his lands of Blackwood, on this ground, that the late Marquis of Hamilton having disposed to the King the Abbacy of Arbroath, did, in consideration thereof, in *anno* 1636, get a charter from the King of the barony of Leshmahago, a part of the Abbacy of Kelso, of which the lands of Blackwood were holden ward; which lands having been appraised, and the apprisers infest holden of the King, the Laird of Blackwood having thereafter disposed them to Major Ballantine by his contract of marriage with Blackwood's daughter, and the Major having purchased a right from the apprisers, both upon Blackwood's procuratory of resignation and the apprisers, he resigned the lands in the Marquis's hand and did take his infestment holding ward of him; likeas, this Blackwood, who is heir of provision to the Major, as procreate by Marion Weir, Blackwood's daughter, with William Lowrie, hath no other right but as heir of provision to the Major, and yet he hath taken infestment holding of the King; likeas, the said William Lowrie his father, as lawful administrator, and taking burden for him, has obliged himself by his bond, that so soon as the Marquis should obtain a right to the superiority, he should take his infestment from him ward; and by the act 30th Parliament 1661 ratifying the act of annexation 1633, it is expressly provided, That any right