

to enter his vassal in the said lands ; *2do*, The said lands were held ward, and Major Bannatine did acquire the same by contract of marriage, bearing a resignation in favours of the heirs tailzie and provision, so that it was of great importance to obtain infeftment by charter from the right superior ; as likewise the Major had right to several comprisings of the estate, and upon all these rights did take a charter from Duke Hamilton, which, in common sense could not have been supposed to have been done by error or mistake. This interlocator was given, albeit the charter by the Duke to Major Bannatine was upon a resignation, bearing either to be holden of the King or the Major, or any other lawful superior ; which made the decision very hard, the error being founded upon an uncertainty contained in the ground of the charter.

*Gosford MS. No 173. p. 69. & No 197. p. 79.*

No 48.

1673. *January 14.* EARL OF NITHSDALE *against* FEUARS OF HOLYWOOD.

THE Earl of Nithsdale pursues improbation and reduction against the feuars of Holywood, and craved certification *contra non producta*. The defenders *alleged* no process, because the pursuer hath no sufficient title to reduce or improve the defenders' rights, he being only a Lord of Erection ; and by the act 10th Parliament 1633, the superiority of all the erected benefices is annexed to the Crown, and there is only reserved to the Lords of Erection the feu-duties, till they be redeemed, which cannot give them interest to reduce or improve. The pursuer *answered*, That by his infeftment he hath right to all the lands of the benefice which are not feued but in property, and consequently hath interest to call for production of the evidents, that it may appear what hath been property, and likewise what are the feu-duties of the lands feued ; *2do*, the pursuit is also at the instance of his Majesty's Advocate, who hath unquestionable interest to improve and reduce. It was *replied*, That the general course of the Advocate can give no interest for production, but only a special process at his Majesty's instance, by express warrant from his Majesty or his officers ; and if upon this ground improbations be sustained, all the vassals of kirk-lands of Scotland may be so called in question. And it is known, that King Charles the first writ several letters, declaring, that he would not insist against the feuars, or ancient possessors of kirk lands.

THE LORDS found no process in the reduction and improbation, but declared they would suffer the pursuer to turn the same into an exhibition, that the pursuer might have inspection what the feu duties were.

*Fol. Dic. v. 1. p. 530. Stair, v 2. p. 150.*

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No 49.  
Found in conformity with  
Preston against Ebred,  
No 47. p.  
7976.

No 49.

\* \* Gosford reports this case :

IN an improbation pursued at the instance of the Earl of Nithsdale, as infeft in the barony of Holywood, against the vassals, it was *alleged* for them, That they were not obliged to take a term to produce their evidents, because the Earl's predecessors were infeft in the said barony, as Lords of Erection, and upon their submission and surrender of their superiority the same was annexed to the Crown, *anno* 1633, whereby all the Lords of Erection are declared to have right to the feu-duties of the vassals, ay and while they be redeemed, which can be no title to the Earl to pursue an improbation of the vassals' evidents and rights. It was *replied*, That the Earl and his predecessors standing heritably infeft in the said lands, had good right to pursue an improbation against the vassals, because their right being improven, he himself will remain vassal to the King, and obtain the property; likeas the King's Advocate concurs in the pursuit, for his Majesty's interest. THE LORDS did sustain the defence, notwithstanding the reply, and found that the pnsuer's title, being nothing but a right to feu-duties, he could not thereupon pursue an improbation which were of a dangerous consequence, against the whole feuars of kirk lands; but they did sustain the same as an exhibition of their charters, to the effect he might know the quantity of the feu-duties to which he had right; and found likewise, that a general concurrence of the King's Advocate was not sufficient, but that he ought to pursue an improbation at the King's instance, if he intended to question the vassals' right.

*Gosford, MS. No 554. p. 298.*

1682. *March.*FINDOURY *against* TOWN of BRECHIN.

No 50.

FOUND, that although superiors of erection, by the act 10th Parliament 1633, were not formal superiors, (having only the feu-duties, and not the other profits of the superiority) yet hospital lands, or *maison-dieus*, fell not under the annexation 1587; cap. 29. and that such continued superiors, as being excepted from the annexation.

*Fol. Dic. v. I. p. 531. Harcarse, (SUPERIORITY.) No 939. p. 264.*

\* \* Sir P. Home reports this case :

1682 *February*.—THE Laird of Findourie, as having right by progress to the lands of Coldhame, from the Chaplains of Coldhame, having pursued a declarator against the Town of Brechin, for declaring his right and property of the said teinds, and that he holds the same feu of the King, who has right to the superiority by the act of annexation in the year 1587, and that the Town of Brechin had no right thereto; *Answered*, That the King having granted a