

1684. *March 12.* The ARCH-BISHOP of ST ANDREWS *against* BETHUN.

IN the action pursued by the Arch-bishop of St Andrews against Bethun of Blebo, for reducing a charter granted by Bishop Sharp, whereby the lands of Blebo, holding ward of the see of St Andrews, were changed from ward to tax-ward, upon this ground, that the granter could not prejudge his successors by taxing the ward and marriage, which were casualties. And it being *alleged*, That albeit there were several laws limiting the bishop's power as to the spirituality, viz. the teinds, yet there was no law limiting the bishop as to the feuing and taxing of the temporality, except only, that the same could not be done in diminution of the rental; and that, both by the common law, and by the act 71st, Parl. 14th, K. J. II. and by the act 91st, Parl. 6th, K. J. IV. prelates and barons might set their lands in feu farm to the competent avail, *i. e.* not under the retoured duty. And it being *replied*, That the bishops being administrators of the see, could do no voluntary act to the prejudice of their successors; and that taxing was a greater prejudice to their successors than feuing, seeing the tax-duty was only payable *si contigerit*, and was a limitation and restriction of what the bishop might have by the ward and marriage, whereas feu-duty was a constant rent yearly; and that there was no law allowing the bishop to tax, but, on the contrary, by the 11th act, Parl. 10. Ja. VI. bishops were appointed to leave their benefices in as good condition as they found them; likeas, by the act 5th, Parl. 22. bishops are discharged to set their quots and casualties; and, by the 9th act, Parl. 23. there is a license to bishops to feu out their lands for the space of three years allenary, whereby it was clear, that bishops could neither tax nor feu till these three years were expired;—THE LORDS sustained the reasons of reduction, and found, that bishops could not tax the ward-holding to the prejudice of their successors, and to the prejudice of the King, when the see should vaick.

Thereafter, it being *alleged*, That the bishop had homologated the foresaid charter by receiving the *canona*, which was paid yearly by the old charter, and was augmented by the new, the LORDS found, that the bishop was not precluded thereby from pursuing a reduction, seeing, while it stood, he could claim no more but the canon, and therefore found it no homologation. See KIRK PATRIMONY.

*Fol. Dic. v. 1. p. 382. P. Falconer, No 88. p. 60.*

\* \* This case is reported by Harcarse, Fountainhall, and Sir P. Home, *voce* KIRK PATRIMONY.

No 80.

A bishop had changed his vassals from simple to tax-ward. His successor brought a reduction, in the mean time receiving the canon. Found that this was no homologation; for, till the charter should be reduced, he could claim no more than the canon.