

*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-

No 53.

grims, and were sworn to it; and by the abolition of popery, must now belong to the King; And Stair, book 4. tit. 24, ranks them with other kirk-lands; and Pope Adrian IV. excoemed their lands from payment of teinds. Yet *vid. supra*, 12th February 1698, Duncan, No 21. p. 5140, *voce* GLEBE. At last the LORDS found, that temple-lands were not kirk-lands, nor annexed to the Crown.

*Fol. Dic. v. 1. p. 531. Fountainhall, v. 2. p. 94.*

1714. June 9.

The GOVERNORS OF HERIOT'S HOSPITAL *against* ROBERT HERBURN of Bearfoot.

No 54.

Though a vassal had taken charters from the Lord of Erection for the space of 40 years, this was not found to import his consent to become vassal for ever, or that he might not thereafter return to the King. Reversed on appeal.

THE GOVERNORS of Heriot's Hospital pursue a declarator of non-entry of certain lands as held of the Hospital.

Bearfoot, by way of defence, repeats a declarator that he has right to hold the lands libelled of the Crown, in as far as the Hospital is in the place of the baron of Broughton, who was a Lord of Erection; and the defender's lands do now hold of the Crown, by virtue of the several acts of annexation, especially the 14th act Parl. 1633, and the 53d act Parl. 1661.

It was *answered* for the pursuers, That they are not in the common case of Lords of Erection, because the Earl of Roxburgh having right to the erected barony of Broughton, entered into a contract with King Charles I. in the year 1630, whereby he resigned in the King's hands *ad remanentiam*, and the King granted a wadset of these lands to the said Earl, whereby the erection was extinguished, and the lands therein mentioned wadset by a private contract for a most just and onerous cause.

*2do*, The 13th act of the Parl. 1633, anent regalities of erection, bears, in the end thereof, an express clause decerning and ordaining the lands and barony of Broughton, mentioned in the infeftments granted to Earl of Roxburgh in the year 1630, not to be comprehended in the said act, excluding the same utterly therefrom, to remain with the said Earl and his heirs after the form and tenor of the infeftments made to him and his authors of the same.

*3tio*, As to the 53d act Parl. 1661, the same is only a ratification of the act 1633, which is specially therein narrated and ratified; and albeit there be a new annexation *per verba de prasenti* in ample terms, yet the same act contains a clause near the end of it to this import, viz. that the said act 1661 is with the whole exceptions and reservations contained in the acts made in *anno* 1633, which are thereby holden as repeated and expressed therein; so that the fore-said exception in the act of Parl. 1633, doth preserve the right of the Earl of Roxburgh, the Hospital's author, entire to the full extent of his infeftments, and the same exception is repeated in the annexation act 1661 as aforesaid.