

## S E C T. III.

## Powers of the Court of Freeholders.

1745. February 6.

No 219.

MONRO of Teananich *against* MACKENZIE of Cromarty.

HUGH MONRO of Teananich and others, gave in a complaint against Mackenzie of Cromarty and others, for turning them off the roll of electors of the county of Ross at Michaelmas 1744, when they were summoned before the Lords of Session, to shew cause why they ought not to be expunged in virtue of the late statute.

THE LORDS found the act to be a contempt, and decerned the complainers to be considered as standing on the roll, till the petition against them should be determined, and the defenders to pay L. 10 Sterling as the expense of the complaint.

*Fel. Dic. v. 3. p. 430. D. Falconer, v. 1. p. 66.*

No 220.

1745. February 26. SIR PATRICK DUNBAR *against* BUDGE of Toftingale.

A person being enrolled on a superiority, which with his lands he acquired from the patron of a hospital, it was objected, that the act vesting in patrons the right of entering heirs in lands held of prebends, &c. did not extend to hospitals. No person appearing to claim the superiority, the Lords thought the objection *ius tertii* to the freehold-  
519.

JAMES BUDGE of Toftingale standing on the roll of freeholders for the county of Caithness, an objection was made to his title, that part of the lands which made up his valuation, had been held of the hospital of St Magnus, from the patron whereof Mr Budge had acquired the patronage, in so far as concerned these lands, as he had the superiority of the lands themselves, and was infeft therein by charter under the Great Seal, the terms whereof were, after granting the lands: ‘ Una cum advocacione, donatione et jure patronatus hospitali  
‘ tatis hospitii de Sancto Magno in Caithness, et hoc solummodo in quantum  
‘ spectat, vel extendi possit ad prædict. terras, aliaque supra mentionat. quæ  
‘ olim ad dictam hospitalem pertinuerunt. Quod quidem jus patronatus dicti  
‘ hospitalitatis hospitii Sancti Magni, et jus superioritatis terrarum aliorumque  
‘ supra script. virtute ejusdem, secundum leges et acta Parliamenti in Scotia a  
‘ tempore reformationis facta et statuta, ab ante hereditarie pertinuerunt ad  
‘ Georgium Sinclair de Ulbster, et per eum ejusque procuratores legitime con-  
‘ stitutos, virtute patentium procuratorie resignationis literarum in dispositione  
‘ per eum concepta contentarum, de data tertio die Januarii 1740, debite et le-  
‘ gitime resignata fuerunt, cum omni jure et interessé, quod dict. Georgius  
‘ Sinclair habuit, vel prætereundere potuit, in manibus dict. domini capitalis ba-  
‘ ronis et remanentium dict. Scaccarii baronum, et potestatem et commissionem  
‘ resignationis terrarum, jurium patronatus, aliorumque in Scotia de nobis ten-

‘torum recipiendi, et desuper nova infeofamenta concedendi, a nobis habentium, tanquam in manibus nostris immediati legitimi superioris earundem, in favorem, proque infeofamento dict. terrarum et juris patronatus dict. hospitalis hospitii, in quantum ad easdem spectat,’ &c.

No 220.

*Objected* ; Mr Budge’s right to the superiority of these lands, depends on the truth of the proposition laid down in the charter, that the superiority by law belonged to the patron, which fails in two respects ; for, *first*, The 54th act, Parl. 1661, on which this is pretended to be founded, does not relate to hospitals ; and, *2dly*, This statute only provides, That the vassals of benefices, who were put to great inconveniencies by not knowing their superiors, might take infeftment from the patrons, but did not divest the true titulars of their right.

*Answered* ; The patronage of this hospital appears as early as the year 1540, in the persons of the Earls of Caithness, who probably founded it to be holden of themselves, reserving the patronage.

In 1560, a feu of the lands in question was granted by the master of the hospital, which coming into the person of Toftingale, he was pursued by the patron as superior, in virtue of the act 1661, in a reduction and improbation, wherein the title was sustained, and he obliged to take a day ; and on this he was advised to purchase the superiority of his own lands, which he did, and is infeft under the Great Seal.

The act of Parliament ought to be interpreted in the most beneficial manner to patrons taking up the superiority in virtue thereof, as it interferes with the right of no third party ; and it would be absurd for the vassals to hold their lands of them, if they did not hold them themselves. If the patron is not superior, nobody is ; for the titulars are no longer ; all that is reserved to them being the profits and emoluments, which may easily be separated from the right, as in church-lands.

THE LORDS considered that the claimant was infeft under the Great Seal, and nobody appeared, who, as master of the hospital, or otherwise, might dispute the superiority with him ; and therefore thought the freeholders had no interest to contest his title to his estate.

THE LORDS repelled the objection.

Reporter, *Lord Minto.*Act. *Ferguson.*Alt. *W. Grant.**Fol. Dic. v. 3. p. 430. D. Falconer, v. 1. p. 86.*

1750. June 20.

SINCLAIR of Southdun against SUTHERLAND of Forse.

No 221.

DEBATED, but not determined, whether a meeting of freeholders can overturn the proceedings of a former meeting.—See APPENDIX.

*Fol. Dic. v. 3. p. 430.*