

No 43.

dishabilitated, when the King granted the Earl of Home's right, so that there could be no demission, the King being in the commendator's place, and could not demit to himself, the dishabilitation at least was equivalent to a demission, though it had been necessary, as it was not; for albeit *de facto*, the King erected upon demissions, yet that he could not, after the abbot's death, have erected it, or provided another, or even during his life, reserving his temporal provision, there could be no doubt, else the demission of a liferenter or administrator could never give the King right of fee, which the resigner had, and here, the King had the right of fee, but not the resigner.

Yet the LORDS found, that seeing all erections by custom proceeded on demissions, that the Earl of Home's not proceeding so, and John Stewart's proceeding upon his demission, was preferable, and therefore repelled the defence.

It was further *alleged*, That John Stewart had ratified the defender's tack. It was *answered*, That was but personal, and could not be relevant against the defender, being a singular successor. It was *answered*, That the pursuer's interest being but for relief, the defender could satisfy, and pay the interest, upon assignation, and so his singular title not being absolute, might be so purged.

Which the LORDS found relevant.

Fol. Dic. v. I. p. 530. Stair, v. I. p. 366.

1680. June 10.

The EARL of PANMURE and FORBES of Monymusk *against* MENZIES of Pitfoddels.

No 44.

THE LORDS found the feuers of Abbacies were only liable for the feu-duties contained in the ancient feu-charters granted by the abbots to them, but not to relieve the Lord of erection of any part of the blench-duty payable by him to the King, unless they have expressly burdened themselves with the said relief in their late charters; because the Lord of erection is liable for the blench-duty, merely upon account of the erection granted in his own favour, which cannot prejudice the anterior vassals.

Fol. Dic. v. I. p. 530. Fountainball, MS.

1699. February 8. EARL of ABERDEEN *against* FORBES of Auchorties.

No 45.

Although
Lords of
Erection after
1633 were no
more superi-
ors, and had
only right to

IN the competition between the Earl of Aberdeen and Forbes of Auchorties, the case was, the feu-duties of these lands belonged anciently to the Abbacy of Arbroath. That being erected in favours of the Marquis of Hamilton, he conveyed them to Urquhart of Meldrum, who, by a simple disposition, first transmits them to Forbes of Auchorties, and afterwards by resignation to the