

H O S P I T A L.

1724. February 6.

The HOSPITAL of PERTH, *against* Sir JAMES CAMPBELL of Aberuchall.

THE Managers of the Hospital of Perth, as pretending right to the superiority of the lands of Leonardshall, belonging to Sir James Campbell, insisted in a process of improbation and non-entry against him.

These lands had formerly held of the priory of the charter-house of Perth, and the Managers founded their title upon a grant from King James VI. *anno* 1569, in favours of the Hospital, of several lands, &c. belonging to the religious houses within the town and Parish of Perth; which grant in their favours was confirmed, and the lands, and others therein contained, were of new disposed to the Hospital upon the 29th July 1587, which was the date of King James's revocation and of the general annexation of kirk-lands to the Crown; and both these grants were ratified in Parliament *anno* 1592.

The defence made for Sir James was, That his lands having formerly held of the priory of the charter-house of Perth, the superiorities belonging to all such religious houses (suppressed by the Reformation) fell into the hands of the Sovereign, without any other exception, than that in favours of the Earl of Roxburgh; and that in favours of archbishops, bishops, and other chapters; all others being expressly annexed to the Crown by the 10th and 14th acts of Parliament 1633, and confirmed by the 53d act of Parliament 1st, Charles II. that therefore Sir James was at liberty to take his lands to be holden of the Crown.

It was *answered* for the Hospital; That their rights were not comprehended under these last statutes; *imo*, Because the grant to the Hospital was upon the very day of King James's revocation of all grants of kirk-lands, in which there was a special exception of those in favours of hospitals; and the Lords had found, in the case of the Earl of Lauderdale against Brand, 14th Feb. 1705, *voce* NON-ENTRY, that the lands then in dispute were not annexed to the Crown by the

No 1.

The acts of Parliament annexing the superiorities belonging to religious houses to the Crown, were found not to comprehend mortifications in favour of hospitals.

No 1. acts 1633, because they were particularly excepted from the general act of annexation 1587. *2do*, In the general revocation, act 9th, Parl. 1633, in all the submissions, surrenders and decreets-arbitral that followed upon it, the infeftments in favours of hospitals were still excepted; therefore the acts of Parliament which ensued upon the King's revocation could not be presumed encroachments upon the Hospital's right. *3tio*, It was contended for the Hospital, That even the words of the statute did not comprehend their case, such kirk-lands only being annexed which had been erected into temporal lordships, baronies, or livings, under none of which the grant in their favours could come; because by the act 121, Parl. 1592, 'all ratifications in Parliament of erections of kirk-lands into temporal lordships or livings are discharged;' yet, in that same Parliament, and of that same date, the mortification to the Hospital of Perth was ratified.

It was *replied* for the defender; That the exception of the Hospital's right from the general act 1587 could have no influence upon its being excepted from the annexation. The rights of a great many other persons were excepted expressly, as well as the Hospital's, who yet never pretended that their vassals were in a different case from the vassals of other lords of erection, and that because of the generality of the words of the law, 'all erections made, whether before or after the said annexation in the year 1587.' *2do*, The pursuers could not found upon that clause of King Charles I.'s revocation, which excepts the infeftments in favours of hospitals, without acknowledging that their right was an erection into a temporal living; for, by a subsequent article in that revocation, 'all infeftments of whatsoever abbacy, priory, &c. if not erected into a temporal barony, lordship, or living, to and in favours of whatsoever person or persons, are revoked;' which must comprehend the superiority in favours of the Hospital, unless they admit themselves to have right to them as a temporal living, and consequently fall under the words of the annexation 1633.

THE LORDS found mortifications in favours of hospitals were not comprehended under any of the acts of annexation.

Reporter, *Lord Dun.* Act. *Ro. Craigie.* Alt. *Ch. Areskine.* Clerk, *Hall.*

Fol. Dic. v. 3. p. 277. Edgar, p. 29.

1765. August 9.

The MERCHANT COMPANY and TRADES of Edinburgh *against* The MAGISTRATES, &c. Governors of Herriot's Hospital.

No 2.

Governors of a hospital have power to feu out the hospital's lands.

THIS hospital was endowed by George Herriot, for the maintenance and education 'of poor fatherless boys, the sons of burgesses and freemen of the city of Edinburgh.' The Magistrates, Ministers, and Council of the city, were ap-