

1684. *January.*ROBERT CAMPBELL of Silvercraigs *against* Several of ARGYLE' VASSALS.No 5.
Found as
above.

FOUND that ward-lands being feued out before the year 1633, by the King's vassal for a competent avail, conform to act of Parliament, the act of Parliament was equivalent to a confirmation, and ought to defend the sub-vassal against the forfeiture of the immediate superior, as well as against ward and recognition. And in Lauderdale's case, the vassal was obliged to prove, that the lands were feued for a competent avail, and not the superior or donatar that it was incompetent.

Fol. Dic. v. 1. p. 295. Harcarse, (FORFEITURE.) No 494. p. 136.

S E C T. II.

Act 1606, how far extended.—After this act what the effect of Superior's consent.

1629. *July 1.* LA. CATHCART *against* VASSALS.

No 6. FOUND that ward-lands of the principality could not be disposed feu after the act of Parliament 1606.

Fol. Dic. v. 1. p. 296. Kerse, MS. fol. 112.

* * * See Act 16th Parliament 1633, where the contrary is understood.

* * * Durie reports the same case :

THE Lady being donatar to the ward of the lands by decease of her husband, and pursuing thereupon removing, the lands being holden by the Lord Cathcart of the Prince, and some of the defenders who were vassals to the Lord Cathcart, by a blench holding of himself, alleging there could be no ward, because herself was infest, conform to the contract of marriage, in these lands, to be holden of the Prince; likeas her infestment was confirmed by the Prince, so that there could be no ward;—and the Lady *contending*, that albeit that were true, yet she could not thereby be debarred from the right of the ward granted to her, for she might use any of the titles, either her liferent-right, or the right of the ward, against this excipient who had no right to exclude the ward, his infestment not being confirmed;—THE LORDS found the exception relevant; for they found, that there being an infestment granted to be holden of the su-

perior, and confirmed by him to the vassal, there could not be any ward, that vassal living, and being infeft, holden of the superior, and confirmed, as said is; so that the vassal so infeft might pursue the sub-vassal of that land, upon the ground of his said right confirmed, but had no right to pursue upon any ward which was not fallen; whereas, if the Lady's right had been made to be holden of the granter, and not of the superior, the superior's confirmation would not *eo casu* have staid the ward. *Item*, In this process it was found, that a feu being given by the Prince's vassals since the year 1606, not being confirmed by the Prince, excluded not the ward, seeing the Prince was found *hoc casu*, ought to be repute as a subject *intuitu regis*, and therefore that the act of Parliament did militate here. See JUS TERTH.—PERSONAL OBJECTION.—WARD.

Act. *Advocatus.*

Alt. ———.

Clerk, *Gibson.**Durie, p. 456.*

No 6.

1672. June 28. EARL of EGLINTOUN against The LAIRD of GREENOCK.

EGLINTOUN being superior of the lands of Broadstone, he and his donatar did pursue the Laird of Greenock, and the Earl of Mount-Alexander, for payment of the avail of the marriage, and to hear and see the lands declared to be affected therewith, in respect Mount-Alexander died infeft holding the lands ward of the pursuer. It was *alleged*, That Mount-Alexander did hold other lands in Ireland ward of the King, and therefore the ward of the marriage could never be craved by the pursuer as superior of other lands in Scotland. It was *replied*, That, by the law of this kindom, any subject who is superior of ward-lands cannot be prejudged of the benefit of his vassal's ward and marriage, by his holding lands in another kingdom ward of the King, the effect whereof can only be, that, in the modification of the avail of the marriage, no consideration ought to be had but of the lands within this kingdom.—THE LORDS did repel the defence, and found the avail of the marriage due to the pursuer, but to be modified as said is.

Thereafter, upon the 16th July 1672, it was farther *alleged* for Greenock, That the Earl of Eglintoun had consented to his right of wadset of the saids lands to be holden feu of the disponder, with a discharge of the feu-duties during the wadset; and, therefore, by the act of Parliament 1606, his lands being set in feu with the consent of the superior, cannot be liable either to the ward or to the avail of marriage. It was *replied*, That the act of Parliament 1606 does relate to the act of Parliament in King James II.'s time, giving power to vassals who held lands in ward to grant feus thereof to sub-vassals, but only where they are to acquire irredeemable rights, whereas the right in question is a right of wadset. And albeit the superior's consent, during the wadset, take from him

No 7.

A feu granted by a vassal to a sub-vassal, with consent of the superior, found valid to exclude ward in so far as concerned the sub-vassal.