

that he had no interest as superior, being denuded. The Lords found, That, in neither case, the superior or donatar could have interest in the liferent escheat.

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1669. *June 30.* The EARL of ARGILE *against* His VASSALS.

THE Earl of Argile, being donatar to the forefaulture of the late Marquis of Argile, his father, pursues an improbation of the vassal's rights, and craved certification. The vassals alleged, No certification against their rights; because any right the Earl had was qualified by the king's gift,—that he should only have lands paying 15,000 pounds, and that the rest should be conveyed to the creditors; and the creditors thereupon claiming the property of the vassals, as falling within the forefaulture, his majesty wrote a letter, declaring, that it was not his meaning, by the gift, that the creditors should have any more lands conveyed to them than the remainder of the property belonging to the late Marquis, over and above this Earl's part, and that the superiority should entirely belong to the Earl and his successors; by which his majesty's mind and pleasure is evident, that the Earl should only have the superiority, and not the property of the vassals. *2dly.* The vassals offered to produce what rights they had flowing from the house of Argile; but there could be no certification as to what they had not, in respect of the troubles, especially no certification for want of confirmation of the vassals' rights by the king; because several of the vassals continued loyal to his majesty during all the troubles, and some of them lost their lives in his service, opposing the said late Marquis himself; so that it can never be thought to be his majesty's purpose or pleasure so to restore this Earl, the Marquis's heir apparent, as thereby to forefault the vassals who adhered to his majesty, and who durst not, in time of these troubles, have sought confirmations, his majesty's Exchequer being then in the management of those who were in opposition to him. It was answered, for the pursuer, to the first, That, neither by the pursuer's gift from his majesty, nor by the foresaid letter, there is nothing granted to the vassals in opposition to the Earl's right; but in opposition to the creditors, that they should have no hand in the vassals' estates. Likeas, his majesty, by his last ratification and charter under the great seal, produced, hath most distinctly and clearly expressed his meaning and pleasure, that, by the foresaid gift or letter, his majesty did only exclude the creditors from the estates of the vassals; but thereby declares, that not only the superiority and casualties thereof should belong to the Earl, but the property of all those who had not sufficient rights from the house of Argile, and confirmations from the king, and that the Earl might intent all actions competent of law for that effect. It was answered for the vassals, That, if their true condition and adherence to his majesty had been understood, his majesty would not so have declared; and that, *post jus quæsitum* to them by the king's gift and letter, no posterior declaration impetrated from his majesty should prejudice them; at the least, they humbly craved that the Lords, according to their former interlocutor, would represent the case to his majesty, that his pleasure might be known, and that his majesty might interpose with my Lord Argile, not to insist against the

vassals who had been loyal. It was answered for the Earl, That he had given no just grounds to his vassals to expect, that, though they were in his power, that he would destroy them and annul their rights; and, seeing his majesty had fully and absolutely intrusted them to him, they ought to have rested upon his kindness and generosity, and not to have made all this clamour, where they have no legal defence,—it being no strange nor new thing for the king to give gifts of forefaulture, without any reservation of vassals, who had no confirmation from the king; yea, many times without any reservation of the forefault person's debt: and his majesty has lately so done to the Marquis of Huntly, to whom he gave the estate of Huntly, without reservation either to vassals or creditors, and that upon the forefaulture of the Marquis of Argile, who had right to, and was in possession of, the estate of Huntly, for vast sums of money; and the Earl of Argile has the gift of the remainder of his father's estate, with the burden of more debt than the proper debt of the house of Argile would have been, over and above the debts undertaken for the house of Huntly. *2dly.* Whatever the vassals might plead in point of favour, yet they do not pretend to a defence in law; and the Lords, being judges of the law, ought not to stop the course thereof, upon the insinuations of any party, otherways they may deny the course of law to any of the lieges when they please, upon the account that they think the law hard or rigorous, or the king's grants made conform thereto. And whatsoever the Lords might do in the dubious interpretation of a treaty of peace, to know the king's meaning, yet, *in claris, non est locus conjecturis*: Nothing can be clearer than the king's meaning under his great seal; and all the defenders can pretend is favour, which is no point of right nor legal defence. The Lords granted certification *contra non producta*, conditionally, that what the vassals should produce betwixt and the tenth of November should be received: and left it to the vassals, in the mean time, if they thought fit, to make address to the king, that he might interpose with the Earl in their favours; or to debate any thing they thought fit, when the Earl insisted for reduction of their rights, for want of confirmations, or for mails and duties.

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1669. *July 14.* The DUKE of HAMILTON *against* The FEUARS of the KING'S PROPERTY.

THE Duke of Hamiltoun, as collector-general of the taxations, having charged the feuars of the king's property for payment of this current taxation, several of them suspended upon this reason, That, by the Act of Convention, there is abatement given of a third part, to such shires as [lie] in the west and south, in regard their retours are higher than the rest of the country, and yet these of the king's property are charged for the whole. It was answered, That that abatement cannot extend to the feuars of the property, because, in all former taxations, they were distinct both from the temporality and spirituality; and, therefore, though, by the Act of Convention, the temporality of these shires be eased, it will not extend to the property; especially seeing the reason of the Act cannot extend to them,—for the feuars of the property did bear no taxation till the year 1592, and then there was a commission granted for retouring them; and