

No 40.

Sovereign Prince, whereas the King's eldest son is a Prince *agnoscens superiorem*, and so is no Sovereign Prince; yet it is the sovereignty, which by his dignity gives the preference, whether his title be Emperor, King, Prince or Duke; for the sovereignty is compared to the sun, and the subjects to the stars, which will all disappear when the sun shines; and to show that this keeps an exact analogy with the laws of the kingdom, by the 16th act, Parl. 1489, it is declared, That the vassals of the Prince shall be members of Parliament, till the King should have a son that should be immediate betwixt him and them, to answer for them; so that when the Prince is not, his vassals are immediate vassals to the King; and by the late act for changing of ward to feu, and the revocations of all the Kings, the same things are enacted anent the principality as anent the royalty.—It was *triplied*, That these statutes are *stricti juris*, and cannot be drawn in consequence, and do but constitute *jus novum*.—It was *quadruplied*, That they are rather declaratory of what was the King's right, than constitutive of any new right; and as to the favour of the defender's interest, that it is hard that without the vassal's fault his condition should become worse by an accident, and that this may be drawn in example to the prejudice of the lieges;—it was *quintuplied*, That this case is very rare, that one person should hold tax-ward of the King, and simple-ward of the Prince; and that the vassal's condition may become worse without his fault, is evident; for though a superior hath had a ward-vassal for hundreds of years, and thereby his marriage, yet if that vassal acquire any ward-land holden of the King immediately, the King, though the later superior hath the marriage; or if a vassal hold ward of two subjects, whereof the elder superior is preferable, yet if the younger superior resign his superiority to the King, the eldest superior is thereby excluded, so that it is the Sovereign dignity that makes the preference, which holds not only in the royalty and principality, but in all lands whereunto the King doth succeed, as by forfeiture or recognition, or which he may acquire by excambion or vendition.

THE LORDS repelled the defence, in respect of the reply, of the non-existence of a Prince; and found, that the King had right to the simple marriage holden of him as Prince, while there is no Prince existent. See PRINCE OF SCOTLAND.

*Fol. Dic. v. 1. p. 569. Stair, v. 2. p. 734.*

No 41.

1681. January 5. LORD DUN *against* VISCOUNT of ARBUTHNOT.

THE heir is only liable for the avail of his marriage, effeiring to the estate he got from his predecessor, without considering the value of his tocher.

An apparent heir, though married, was found not personally liable for the avail of his marriage, not having entered into possession of his predecessor's estate.

*Fol. Dic. v. 1. p. 570. Stair.*

\* \* \* This case is No 4. p. 4417. *voce* FEU.