

G I F T O F W A R D.

S E C T. I.

Gift of Ward and Marriage.

1612. *January 30.* L. KINTAIL *against* The King's TREASURER.

UPON the penult of January 1612, a suspension raised by my Lord of Kintaille and the donatar of his ward, suspending the Treasurer's charge executed against them for payment of nine score merks yearly, for the taxed yearly duty of the Lewis, so long as they were in ward, and for nine hundred merks for his taxed marriage for the said barony, *alleging*, That the general gift of all lands falling in ward in his Majesty's hand, by the decease of the umquhile Lord of Kintaille, together with the marriage of his heir, behoved to comprehend the ward of the Lewis as well as of his remanent lands; there being no lands excepted from his gift, and the marriage of the heir being likewise disposed to the donatar for a great composition, the Treasurer had no place thereafter to seek any further benefit, for the said marriage. To which the advocate *answered*, That he offered him to prove that the umquhile Lord of Kintaille had many ward lands untaxed, in respect whereof, his ward and marriage falling in the King's hands, were disposed; but the ward and marriage of the Lewis being expressly taxed and liquidated, could not fall nor be comprehended under the general gift of the heir's ward and marriage; and therefore, unless the said taxed duty, being liquidated, had been disposed *per expressum*, the general gift of ward and marriage could not comprehend the same. In respect whereof the letters were found orderly proceeded against my Lord of Kintaille for payment of the said taxed duty of the ward of the lands for the year 1611, and yearly thereafter, so long as the lands should be in ward, and likewise for

No I.

The ward and marriage of a person whose lands held of the King, some in tax-ward and marriage, and some untaxed, were gifted generally. Found that the gift comprehended the untaxed lands only.

No 1. payment presently of the duty of the taxed marriage, because this Lord of Kintaile was of age for marriage. This was done in Exchequer the penult day of January 1612.

Fol. Dic. v. 1. p. 349. Haddington, MS. No 2382.

1687. February. BLAIR DRUMMOND *against* INNERNYTIE.

No 2.
Gifts of ward do not comprehend taxward lands unless expressed.

BLAIR DRUMMOND having, for the behoof of my Lord Chancellor, pursued Innernytie for the taxward-duties of the barony of Kinnaird,

Alleged for the defender; That Sir William Paterson had a gift of his ward in general, which comprehended taxwards also.

Answered; By the custom of Exchequer, gifts of ward do not comprehend taxward, unless expressed, in respect taxward is looked upon as a part of his Majesty's property, and of the nature of a feu-duty, for which the ground and lands may be poided; whereas simple ward is of the nature of a temporary infestment, and the intromitters only liable; and a gift is compounded for in Exchequer as a casualty. *2do*, The defender had other ward lands untaxed, which were the proper subject of the said gift.

THE LORDS repelled the defences, and decerned.

Fol. Dic. v. 1. p. 349. Harcarse, (WARD.) No 1009. p. 285.

1687. February 24. LORD CHANCELLOR *against* INNERNYTIE.

No 3.

THE Chancellor as donatar to the wards and marriages, pursuing Stewart of Innernytie, the LORDS found a gift of taxward did not defend against, nor comprehend a simple ward.

Fol. Dic. v. 1. p. 349. Fountainball, v. 1. p. 449.

SECT. II.

Gift of Ward and Non-entry.

1610. February 14.

J. LIVINGSTON of Baldoran *against* MAXWELL of Dunwiddie.

No 4.

A non-entry subjoined to a gift of ward, marriage and relief, will last but three terms after the expiry of the ward. And albeit the gift of the ward and