

SUPERIOR AND VASSAL.

SECT. I.

Suit and Presence at Superior's Head Courts.

1622. *March 16.* *BeQUHEN against GORDON.*

No. 1.

THE vassals of a Lord or Baron cannot be unlauded for not compearance at the Head Courts, unless they are kept on the ordinary days usually observed, or, being changed, they be particularly warned to that court.

Fol. Dic. v. 2. p. 406. Durie. Haddington.

* * This case is No. 206. p. 7491. *voce* JURISDICTION.

1623. *February 12.* *INNES against GRANT.*

No. 2.

The vassal is not exempted from personal service in his superior's courts, though he hold other lands of the King and other superiors, at whose courts he behoved also to compear.

Fol. Dic. v. 2. p. 406. Haddington MS.

* * This case is No. 14. p. 3101. *voce* CONSUETUDE.

1630. *March 12.* *The BISHOP of ABERDEEN against His VASSALS.*

No. 3.

The Bishop of Aberdeen having unlauded in his own court a number of his own vassals for their absence, his procurator-fiscal sought letters conform thereupon. Alleged by one Ogilvie, he could not be unlauded for his absence, because he held

No. 3. his lands feu of the Bishop for payment only of a certain feu-duty *pro omni alio onere*, &c. and was not astricted by his infeftment to give suit at any of the Bishop's head-courts. Replied: *Hoc inest* in his infeftment, that he is obliged to give suit and presence at the said head-courts, if it be not expressly discharged in his infeftment, although there be no mention of it. Duplied: There is no holding of its own nature subject to give suit and presence at courts, except only ward lands, unless it be contained in the infeftment *per expressum*. The Lords found the exception relevant.

Fol. Dic. v. 2. p. 406. Spottiswood, p. 76.

* * * Durie reports this case :

The Bishop of Aberdeen's Bailie having unlauded some of the vassals of the Bishoprick, for not compearing to answer in the Bishop's head-courts, and some of the vassals suspending the charges executed for payment of these unlaws, upon this reason, that they were infeft in the lands in feu *cum curiis*, and for payment of a feu-duty *nomine feudifirmæ*, and thereby were not subject to answer at his head-courts; the Lords found, that feuers, who were infeft for payment of a feu-duty *nomine feudifirmæ* for their lands *pro omni alio onere*, were not subject to compear in their over-lords head-courts, they not being cited nor warned thereto, and so for their not compearance that they could not be unlauded. For the Lords found, that vassals holding their lands by ward holding, by the nature of that holding, are holden, and obliged *hac ipsa* to appear in their superior's head-courts, without any warning or citation, whereas the vassals by feu or blench-holding, by the nature of that kind of holding, (except it be otherwise provided by the tenor of their infeftments) are not obliged to compear at the superior's head-courts, nor at no other courts, except upon particular citation lawfully made to them, in cases where they ought to compear to answer there; in which cases, being so cited, their infeftments do not always exeem them from their over-lords' jurisdiction.

Clerk, *Gibson*.

Durie, p. 506.

1699. December 19.

No. 4.

The Lords found vassals holding blench or feu not liable to give suit or presence at the superior's head-courts.

DALLAS, Younger of St. Martin's, *against* The EARL of CALLANDER.

The Earl, as Sheriff of Stirlingshire, having fined St. Martin's for absence from the head-courts; he suspends, and raises a declarator of exemption, that blench-holders and feuers are not obliged to attend in suit or presence, their *reddendo* being *pro omni alio onere*, and that it has been so decided, 12th of March, 1730, Bishop of Aberdeen's Bailie against his Vassals, *supra*, and Hope's Larger Practiques, Tit. Of the Sheriff. Alleged by his Majesty's advocate, No process till the Officers of State be called for the King's interest, the Sheriff being his lieutenant there. Answered, This being an heritable Sheriffship, the King has neither interest in the fines, nor jurisdiction, and if it should afterwards devolve in his hands, this declarator will be *res inter alios acta quoad* him, and at worst to cite *cum processu* was never refused. The Lords found no necessity of calling the