

1635. February 19.

CUNINGHAM *against* STUART.

No 22.

A VASSAL being year and day at the horn, and then relaxed, after both which the superior sold the superiority, with all rights he had to the land, without having gifted the liferent to any other, the LORDS found that the liferent pertained to the new superior.

*Fol. Dic. v. 1. p. 423. Durie.*

\*.\* See this case, No 18. p. 1738.

1676. December 15.

The EARL of ARGYLE *against* The LORD M'DONALD.

No 23.

THE Earl of Argyle having acquired the superiority of some lands from the King, which, before forfeiture, belonged to his father, did pursue the Lord M'Donald to hear and see it found, that he had lost the right of the lands for not payment of the feu-duties, by suffering two years to run in the third. It was *alleged* for the Lord M'Donald, That Argyle's right being but a disposition of the superiority, could not give him right to any of the bygone feu-duties preceding the disposition; and therefore, unless there were three years resting since the right and infestment, he cannot crave the property of the lands to be his, but so it is, that there are not so many feu-duties resting since his right. *2do*, After the forfeiture of the Earl of Argyle, the defender did enter vassal to the King or his superior, and any right belonging to this Earl of Argyle, never being intimated until the intending this process, he may lawfully purge by making payment at the bar of all bygone feu-duties. It was *replied* to the *first*, That a disposition or charter of superiorities, carries with it all the bygone casualties preceding that right, unless they were either uplifted or confirmed by the executors of the defunct superior. It was *replied* to the *second*, That the lands in question, belonging anciently to the Earl of Argyle, so soon as this Earl did obtain a new right from the King, all the vassals ought to have known thereof, and acknowledged him by payment of their former feu-duties contained in their *reddendo*. THE LORDS did find, as to the *first*, That a right of superiority being disposed, carried along with it all the bygone casualties and feu-duties contained in the *reddendo* of the vassal's charter preceding the disposition, and that there was no necessity these should be confirmed and disposed by executors, not being of the nature of moveable goods, but the consequences of real rights *ex pacto feudali*. As to the *second*, they found, That M'Donald having entered vassal to the King, and Argyle having gotten a new right, but never intimated the same by requiring the feu-duties or pursuing the same, that by a present offer at the bar to make payment of all bygones, the irritancy of the charter, or act of Parliament, might be lawfully purged.

*Fol. Dic. v. 1. p. 423. Gosford; MS. No 922. p. 598.*

\*.\* See Stair's report of this case, No 35. p. 842.; and Dirleton's, No 31. p. 1751.

See APPENDIX.

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A disposition of the superiority to the vassal himself, found to imply a discharge and assignation of the bygone feu-duties.