

No 1. the act 1606, which doth only annul feus set to sub-vassals in time thereafter ; and as to the narrative thereof, the statutory part, and not the narratives of the acts of Parliament, which the Parliament doth not much notice, are our rules ; and this narrative is contradicted by the narrative of the act of Parliament 1633, bearing that there is no reason why the King's immediate vassals should grant feus more than sub-vassals.

THE LORDS sustained the feus, being granted before the act of Parliament 1606.

*Fol. Dic. v. I. p. 295. Stair, v. I. p. 542.*

\* \* \* Gosford reports the same case :

THE Laird of Ernock's predecessors, holding the lands of Chappletoun, ward of the Lord Semple, he did feu the same to his sub-vassals, long before the act of Parliament 1606 ; and this Ernock dying, and his heir being minor, my Lord Semple did gift the ward of the said lands to Steuart of Torrence ; whereupon he, as donatar, did pursue his sub vassals for the mails and duties during the ward.—It being *alleged*, That the defenders had gotten the feus of their lands before the said act of Parliament, at which time it was lawful to all prelates, barons, and freeholders, who held their ward, to grant feus thereof, conform to the 7<sup>th</sup> act, King James II. and 14<sup>th</sup> Parliament, this defence was sustained, and the feuers assolizied, notwithstanding that it was *replied*, That the act of Parliament 1606 had interpreted the said act to have been only made in favour of the King's immediate vassals, who held ward of his Majesty, and not of any sub-vassals holding of other superiors ; because the LORDS found, That the act of Parliament 1606 was only made for the future time, and did not declare any thing as to preceding feus ; as also did interpret freeholders, mentioned in the act of Parliament, King James II. was not only meant of the King's immediate vassals, who held ward, but of their sub-vassals, and so were comprehended under the said act King James II., bearing that the King should begin and give example to the leave to set their lands in feu-farm ; and that by the act of Parliament 1633, it was found that there should have been no difference put between the King and the other superiors, by the act 1606.

*Gosford, MS. No 5. p. 2.*

1674. February 12.

MARQUIS of HUNTLY *against* The LAIRD of CAIRNBORROW.

No 2.  
Feus granted  
by vassals of  
ward-lands,

THE Marquis of Huntly pursues the Laird of Cairnborrow, as donatar to the forfaulture of the Marquis of Argyle, for the mails and duties of certain lands

held by the Marquis of Huntly's predecessors ward of the King, and by them feued out to the defenders and their authors; and the Marquis of Argyle having right by apprising led against the Marquis of Huntly, this Marquis of Huntly hath right as donatar to Argyle's forfaulture.—The defender *alleged* absolvitor, because by the act of Parliament anent feuars, 1457, cap. 71. 'The Parliament finds it speedful that the King begin and give example to the leave, that what prelate, baron, or freeholder shall give feus of his ward-lands, that the feuar shall remain unremoved, paying to the King sicklike farm during the ward, as he did to his Lord;' so that the defender's feus being conform to this act, and while it was in vigour, the King or his donatar cannot quarrel the same, being granted upon, and accepted by, such an invitation by King and Parliament; likeas such feus have ever been found valid, not only against ward, which is specially mentioned in the act, but against recognition, and against all other apertures of the vassal's fee.—It was *answered*, That the said act bears only, 'That the King shall ratifie such feus,' which therefore cannot extend to feus not ratified; and forefaulture being so atrocious a crime, ought to be further extended than recognition.—It was *replied*, That the King's ratification is not to be understood of a charter of ratification passing the Seals, which alone, without any act of Parliament, would be sufficient; but is to be understood of the King's approbation, and not contradiction, otherwise without a confirmation such feus would not exclude ward or recognition, which yet they have ever excluded without any confirmation.

THE LORDS found, That feus granted by vassals of ward-lands, so long as the foresaid act of Parliament stood, did exclude not only ward and recognition, but forefaulture of the ward-vassal, granter thereof, without necessity of confirmation; because forefaulture of the King's immediate vassal being upon the breach of his fidelity, is in effect recognition, whereby the fee is returned without the burden of any deed of the forefault vassal, except such as are preserved by this statute; but forefaulture of those who are not the King's immediate vassals, confiscates their ward-holdings, as a penal statute, but with the burden of all subaltern rights and deeds of the forefault person. *See APPENDIX.*

*Fol. Dic. v. 1. p. 295. Stair, v. 2. p. 265.*

1680. November 16.

CAMPBELL *against* The LAIRD of AUCHINBRECK, and the EARL of ARGYLE.

CAMPBELL of Silvercraigs having apprised Auchinbreck's estate upon a debt, for which he was cautioner for the late Marquis of Argyle, pursued the tenants for mails and duties. Compearance is made for the Earl of Argyle, who *alleged*, That he, as donatar to his father's forefaulture, had the only right to the lands in question, and which were holden of the Marquis feu, and were not confirm-

No 2.

so long as the act of Parl. 1457. c. 71. stood, did exclude not only ward and recognition, but forfeiture of the ward-vassal, granter thereof, without confirmation,

No 3.

Found as above.