

No 53.

firmat qui dare potuit, dedisse videtur. It was answered, That the alienation made by the King's vassal without his consent in *anno 1595*, made the vassal to amit the lands, and the right and property thereof to return to the King, and the declarator tended to hear and see it declared, that the property, at that time and thereafter, was tint and did return to the King; and therefore, the King becoming proprietor in *anno 1595*, his right of property could not be taken from him by any such confirmation of dispositions made by Kellie, who had amitted his property; for the King could not be denuded of his property, unless the seeker of infeftment had expressed the King's right, and the King being informed of his own right, had wittingly dispoened the same. Notwithstanding whereof, the Lords, considering the danger which the lieges might sustain if a private sasine, never apprehending possession, and granted to a minor, being a conjunct person, should infer recognition of these lands, and prejudge them of their public rights acquired *bona fide*, and confirmed by the King, for eschewing of that universal danger, they found the allegiance relevant. Thereafter it was *excepted*, That the alienation made by the guidsir to the oye, being his eldest son's eldest son, and so his apparent heir, could infer no recognition, and for this purpose, albeit the extracts of the *feudes* are in every Doctor's. The pursuer *replied*, That the eldest son being in life, his son could not be heir to the guidsir; in respect whereof, the LORDS repelled that allegiance. It was thereafter *excepted*, That the alienations set in feu to the particular defenders and to others in wadsets confirmed by the King, before the recognition, extending to more than the half of the lands, the alienation of the rest being less than the half, could not infer recognition, because it was lawful to analzie the least half. It was *replied*, That the hail being analzied by the guidsir to the oye, albeit a part of the pursuit was elided by the lawful infeftments of some parcels of the lands, yet, whatever was not elided, was unlawfully analzied, and so inferred recognition; which answers the LORDS found relevant. Finally, the defenders alleged that the infeftment of the barony granted by the guidsir to the oye could not infer recognition, because the sasine proceeded upon a lawful feu-charter; which allegiance the LORDS found relevant against the summons and against the hail posterior infeftments, albeit granted to the said oye *penultimo* February 1612. It was also found, that the defenders who had taken their infeftments holden feu or otherwise of Kellie, and had obtained the same confirmed by the King, behoved to be vassals to the pursuer, who was now the King's vassal in place of Kellie.

Haddington, MS. No 2418.

No 54.

1624. November 25. The LAIRD of COULTER *against* BALBEGNO.

THE LORDS found an exception upon a comprising confirmed by the King, being before the gift of a liferent, relevant; albeit the rebel was year and day

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at the horn long before, and so the King had right to the same by the liferent long before the comprising. In a cause of Sir Patrick Murray's it was found otherwise in my opinion.

Fol. Dic. v. 1. p. 435. Spottiswood, (ESCHEAT & LIFERENT.) p. 99.

No 54.

1629. July 1. LA. CATHCART *against* VASSALS.

No 55.

FOUND that the King's confirmation of a ward or blench holding to be holden of the Lo. Cathcart, who held ward of the Prince free from recognition but not from ward.

Fol. Dic. v. 1. p. 435. Kerse, MS. fol. 81.

* * See Durie's report of this case, No 6. p. 4176.

1669. June 19. SCOT *against* LANGTON.

No 56.

FOUND that the King's consenting to a wadset granted by his vassal, implied a renunciation of the vassal's liferent escheat *quoad* the wadset.

Fol. Dic. v. 1. p. 435. Stair.

* * See this case, No 32. p. 5100.

1672. June 28. EARL OF EGLINTON *against* LORD GREENOCK.

No 57.

Feus granted to a sub-vassal with consent of the superior are, by virtue of the act 1606, cap. 12. secure against ward.

Fol. Dic. v. 1. p. 435. Gosford. Stair.

* * See this case, No 7. p. 4177.

1673. February 6. LORD HALTON *against* The EARL of WEMYSS.

THE Lord Halton having a gift of the recognition of the estate of Craig, pursues declarator of recognition, on this ground, that the whole ward lands were disposed by Craig to Pittarro, after the King's return, *anno* 1660. Comparance is made for the Earl of Wemyss, who produced an infeftment of annualrent granted by Craig out of his whole estate united in one barony; which

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The King's confirmation of a right to part of the ward lands granted by the vassal,