

## F E U.

## SECT. I.

Feus, before act 1606, secure against casualties of superiority.

1668. June 24. STEUART of Torrence *against* FEUERS of Ernock.

**J**AMES STEUART, as donatar to the ward of the Laird of Ernock, by the Lord Semple, of whom Ernock held the lands ward, pursues the possessor, for removing, who *alleged* absolvitor, because they bruiked their lands by feus, granted by the Laird of Ernock.—The pursuer *answered, non relevat*, unless the feus were consented to, or confirmed by the superior; for by the feudal law no deed of the vassal can prejudge the superior, when the lands are ward.—The defenders *alleged*, Their feus needed no confirmation, because they are warranted by law, by the 71st act, King James II., which stood valid until the act of Parliament 1606, prohibiting feus granted but by immediate vassals of the King; *ita est*, the first act cannot extend to the King's sub-vassals, because it bears only freeholders, and bears that the King shall accept of the feu-duty during the ward; but the ward of his sub-vassals would never fall in the King's hand; and this meaning of the act of Parliament is evident by the act of Parliament 1606, bearing expressly, that there was no warrant by the first act for any feus, but such as were granted by the King's immediate vassals.—It was *answered* for the defenders, That they oppone the first act of Parliament, bearing expressly a general reason of granting feus, for the policy of the kingdom, and that the King would give example to the rest; and that the act nowise restricteth to freeholders of the King, but others, who hold of subjects ward, are called freeholders, in opposition to feus; which is also cleared by the 91st act, Parliament 1503, the title whereof bears, 'a power to all persons, spiritual and temporal, to set their ward lands feu;' which clears the meaning of the Parliament and the common custom, till the year 1606, which is acknowledged in the narrative of

No 1.

Feu rights, granted before the act 1606, were valid without consent of the superior, so as to exclude ward, recognition, &c.

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