

and yet confirmations, which are ordinarily granted by the King of sub-feus, do never exclude the ward and marriage of the vassal grantee thereof; albeit, by the act of Parliament 1633, feus are prohibited to be granted by the King's vassals in the same manner as by the vassals of other superiors. It was *replied*, That albeit confirmations, passing in Exchequer of course, do not exclude the ward of the vassal, because the King, by special act of Parliament, is secured from the negligence or inadvertency of his officers; yet it was never so found in a confirmation granted by a subject, in respect of the said act of Parliament 1606.

THE LORDS repelled the *first* defence, and found that Mount-Alexander's marriage ought only to be estimated in consideration of his estate in Scotland; but found the *second* defence founded upon the superior's consent, and act of Parliament 1606, relevant in so far as concerned the sub-vassal; but that the superior had right by the ward-duties to the subvassal's feu-duty, and to the back-tack duties, if any were, or to the superplus duties, if the superior should restrict the wadset, conform to the late act of Parliament; and the Lords had no consideration that this was a feu under reversion, nor that the old act intended feus perpetual to be for melioration. See IMPLIED DISCHARGE and RENUNCIATION.

*Stair, v. 2. p. 94.*

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### SECT. III.

Act 58th, Parliament 1641.—Whether the Superior can renounce his Casualties.—Paction contrary to the nature of Feu-rights.

1696. February 27. PHILLIPHAUGH *against* ELLIOT.

THE LORDS advised the debate betwixt Lord Philliphaugh, as donatar to the ward and marriage of Douglas of Cavers, and Sir William Elliot of Stobs, the Laird of Gladstons, and other sub-vassals of Cavers, for bearing their proportion of 40,000 merks, to which the gift was by a backbond restricted, to be distributed as portions for the younger children of Cavers. There being a feu of these ward-lands given to Stobs in 1655, which was then lawful by the 58th act 1641, allowing ward-lands holden of subjects to be feued, Stobs *contended* it behoved to be subducted from the count, and could bear no part of the 40,000 merks. *Answered*, That the act 1641 being rescinded by the act 1661, though the feu secured *quoad* any casualties arising before the rescissory law in 1661, yet it could never defend against such casualties as fell after; because you

No 7.

No 8.

A feu granted by a vassal of the Crown, upon the authority of act 58th, Parliament 1641, was not found sufficient to defend against the ward and marriage of the superior, falling due after the rescissory act 1661, cap. 15. notwithstanding

## No 8.

of the *salvo* at the end of that act, of all rights and securities in favour of private parties, as the feu was not confirmed, which ought to have been done.

might have confirmed it, and having neglected that remedy *tibi imputes*. *Replied*, There is a *salvo* in the end of the rescissory act, of all rights and securities in favours of private persons, under which this feu must be comprehended. *Duplied*, The reservation is only of the private acts past in these Parliaments in favours of particular persons, whom it was hard to prejudge, though the Parliament itself was *funditus* annulled *ob defectum auctoritatis*; and in the odious casuality of recognition, (yet more unfavourable than wards,) the LORDS found the acts taking them away did not defend after the restitution in 1661, unless the parties did apply to the Exchequer after that time, and get them confirmed, Pitreichie *contra* Geicht, *voce* RECOGNITION; 29th July 1672, Lord Halton *contra* The Earl of Northesk, *IBIDEM*; 12th February 1674, Kilsyth *contra* Hamilton, *IBIDEM*; and 7th January 1676, Cockburn *contra* Cockburn, *IBIDEM*. THE LORDS found, though Stobs' feu was granted *tempore licito*, yet the casualties now acclaimed being due after the rescissory act 1661, the feu became thereby null, and cannot defend, unless it had been confirmed. There was also another point decided in this cause, that Stobs, if he founded on the back-bond, must not take it by halves, but must either take it or want it altogether, and cannot accept a part, repudiating the rest; but, if he would have any benefit by it, he must take it as it stands.

*Fol. Dic. v. 1. p. 296. Fountainball, v. 1. p. 716.*

1749. February 10.

NEIL MACVICAR, *against* COCHRAN of Hill and KER of Crummock.

## No 9.

Clause in a vassal's charter, exempting from legal irritancies, makes part of his real right.

ALEXANDER CRAWFURD of Fergushill, feued out to James Cochran, the lands of Hill for a duty of L. 24 Scots, and relieving him of the teind and dry mulcture payable out thereof; disposing to him 'all and sundry the casualties of the said lands, that might fall or become in the hands of the superiors thereof, either as liferent-escheat, non-entry, or by contingency of not timeous payment of the feu-duties thereof, by and through the said James and his heirs and successors, being put to the horn the space of year and day, or through the heirs of the said James, or his foresaids, lying out unentered to the same, after the death of their predecessors, or by not timeous payment of the said feu-duty.'

Dr Thomas Crawford of Fergushill, sold these lands to Neil Macvicar, writer in Edinburgh; 'assigning him to all feu-rights or contracts, redeemable or irredeemable, past betwixt him, his authors and predecessors, and James Cochran; and to the hail *reddendos* of the said rights, with the hail clauses, obligations and conditions therein mentioned, conceived in favour of him, his authors and predecessors, concerning the superiority and property of the said lands.'