

right granted by the Duke of Buccleuch, to whom Chamberlainnewton became vassal, must be looked upon as a new right, and consequently being long posterior to the right of his lands held of the Earl of Queensberry, he ought to be preferred as *antiquior dominus*. THE LORDS having considered this case, as being *in apicibus juris*, did find, that if, after the forfeiture of Bothwell, the King had granted a confirmation of the sub-vassal's right, that law presumes it had been *confirmatio juris antiqui*; and so he being in that same case, as if he had held of the Earl of Bothwell before his forfeiture, the Duke of Buccleuch, who got the superiority, had been preferred; or, if Chamberlainnewton had remained immediate vassal to the King, by his new charter, the King or his donatar could only have had right to the marriage; but the Duke of Buccleuch, a stranger, to whom the superiority was disposed, having got a resignation from Chamberlainnewton, after he was immediate vassal to the King, and he having accepted of a new charter from the Duke of Buccleuch, to be his vassal, the LORDS did prefer the Earl of Queensberry, as *antiquior dominus*, the competition being betwixt two subjects, of whom a vassal holds several lands-ward, in which case the more ancient is always preferred.

Gosford, MS. No 497. p. 262.

No 31.

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

A SUBJECT SUPERIOR of ward-lands in Scotland, was found not prejudged of the benefit of the marriage, though the same vassal held ward-lands of the King in England or Ireland; and in the modification of the avail of the marriage, no consideration was had, unless of the lands within this kingdom.

Fol. Dic. v. 1. p. 569. Gosford. Stair.

*** This case is No 7. p. 4177. *voce* FEU.

No 32.

1672. July 19. EARL OF ARGYLE *against* The LAIRD OF M'LEOD.

ARCHIBALD CAMPBELL, as donatar by the Earl of Argyle, pursues the Laird of M'Leod, for the avail of his marriage, as it is taxed by his infeftments, granted him by the Earls of Argyle. The defender *alleged* absolvitor, because he holds lands ward of the King, who, by his prerogative, hath the benefit of his vassal's marriage, although he be not the most ancient superior. The pursuer *replied*, That albeit the King's prerogative doth always prefer him in simple wards, that cannot be extended to taxt-wards, for the ward being taxed, becomes in the nature of a feu; and therefore both superiors' wards being taxed, and the marriage likewise, for a small duty, both should have the taxed duty; or if the pursuer's right were simple ward, the preference of the King could only import

No 33.
Marriage of a vassal who held lands both of a subject and of the Crown, was found to belong to the King, by his prerogative.