

No 1. payment presently of the duty of the taxed marriage, because this Lord of Kintaile was of age for marriage. This was done in Exchequer the penult day of January 1612.

Fol. Dic. v. 1. p. 349. Haddington, MS. No 2382.

1687. February. BLAIR DRUMMOND *against* INNERNYTIE.

No 2.
Gifts of ward
do not com-
prehend tax-
ward lands
unless expres-
sed.

BLAIR DRUMMOND having, for the behoof of my Lord Chancellor, pursued Innernytie for the taxward-duties of the barony of Kinnaird,

Alleged for the defender; That Sir William Paterson had a gift of his ward in general, which comprehended taxwards also.

Answered; By the custom of Exchequer, gifts of ward do not comprehend taxward, unless expressed, in respect taxward is looked upon as a part of his Majesty's property, and of the nature of a feu-duty, for which the ground and lands may be poided; whereas simple ward is of the nature of a temporary infestment, and the intromitters only liable; and a gift is compounded for in Exchequer as a casualty. *2do*, The defender had other ward lands untaxed, which were the proper subject of the said gift.

THE LORDS repelled the defences, and decerned.

Fol. Dic. v. 1. p. 349. Harcarse, (WARD.) No 1009. p. 285.

1687. February 24. LORD CHANCELLOR *against* INNERNYTIE.

No 3.

THE Chancellor as donatar to the wards and marriages, pursuing Stewart of Innernytie, the LORDS found a gift of taxward did not defend against, nor comprehend a simple ward.

Fol. Dic. v. 1. p. 349. Fountainball, v. 1. p. 449.

SECT. II.

Gift of Ward and Non-entry.

1610. February 14.

J. LIVINGSTON of Baldoran *against* MAXWELL of Dunwiddie.

No 4.

A non-entry subjoined to a gift of ward, marriage and relief, will last but three terms after the expiry of the ward. And albeit the gift of the ward and

marriage have been unprofitable, yet a non-entry taken after that manner will not subsist as if it were taken originally.

No 4.

Fol. Dic. v. 1. p. 350. Haddington, MS. No 1798.

* * * Kerse reports the same case :

IN an action of declarator of non-entry pursued by John Livingston for the lands of Dunwiddie, *contra* Archibald Maxwell of Cowhill, it was found, that a gift of ward and non-entry granted to John Livingston of Abercorn, to the decease of Sir Robert Maxwell of Dunwiddie, could be no further extended but to the non-entry of the terms after the majority of John Maxwell, apparent heir of the said lands.

This same was decided of before betwixt the Duke of Albany, now Duke of York, and the Earl of Morton, concerning the non-entry of the ward of the living of Buchan.

Kerse, MS. fol. 116.

1611. July. L. OF COLDENKNOWS *against* L. CORSBIE.

LANDS being in non-entries, a gift of ward, marriage, and non-entries, will not serve for the non-entries any longer nor three terms after the expiring of the ward. And a particular gift of non-entries subjoined in the said gift of ward, marriage and non-entries, for the donatar's bruiking the said gift of non-entries, after the expiring of the ward, will not be sustained. An infeftment of lands with a clause *de novodamus, ratione foris-facturæ, non-intritus, &c.* will not purge the bygone non-entries; because *hoc non agebatur* to prejudge the King of his casualty of the non-entries, but only to grant an heritable right *ad futura*. Laird of Coldenknows for the ward of Corsbie in Exchequer, and resolved by the Lords of Session.

No 5.
Found in conformity with the above.

Fol. Dic. v. 1. p. 350. Haddington, MS. No 2287.

1632. February 10. MAXWELL *against* M'GIE.

A GIFT of non-entry subsequent to a ward, gives no interest to the mails and duties, but for three terms after the expiring of the ward; but a new gift must be taken of the non-entry, and a new declarator must be obtained thereupon, as well by him that is donatar to the King, as he who is to a mediate superior.

No 6.

Fol. Dic. v. 1. p. 350. Auchinleck, MS. p. 141.