

Ward granted to the Vassal himself, or to any other for his behoof is upon the Matter a Discharge of the Casualty both as to himself and as to the Vassal concerned in consequence. And the Relation betwixt the Superior and his Vassal, or the mutual Obligation and Faith betwixt them is so exuberant, that the Superior should not take Advantage of a Casualty fallen upon the Account of his own Person and Minority: For the Donatary might take the utmost Advantage of the Gift, and distress the Vassal; it seems contrary to the Feudal Contract betwixt the Superior and his Vassals, for him to take the Gift of his own Ward, and turn it upon them. Stewart answers to Dr. H. Doubt, Tit. Ward. A Ward Vassal having disposed some Lands to be holden Feudal himself, and obliged himself to warrant these Feuars and relieve them of any word that should thereafter fall: The Clause of Warrantice was found effectual to the Feuars against the Disposer and his Heirs even after they were dispossessed of the Superiority in Favour of a singular Successor, by whose Death his Heir fell in Ward. Albeit it was pleaded, that the Warrantice could import only, that the Disposer should relieve the Feuars so long as he remains their Superior, and not that in the Event of the Superiority's being alienated by him or appropiated from him, he should be liable for the Ward of his singular Successor's Heir. In Respect his Obligation to relieve the Feuars of all Wards to come, could not be taken from them by any posterior Deed of his, without their Consent: And therefore he should for his own Security have taken the Person to whom he sold the Superiority, obliged to receive them as his Vassals with the same Warrantice. July 1660 Calquhoun and McQuian contra Stewart of Barfeub. In a Competition of Donatories, he who first intimates, or uses Diligence upon his Gift, is preferred. Ward needs no Declaratory, but the Superior enters immediately to possession of the Fee. *Hope Minors, Tit. Ward, and Non-entry, §. 117. Stair Inst. Lib. 4. Tit. 8. §. 5. Craig Feud. Lib. 2. Tit. 9. §. 9. Vers. Aliquando et non Dominus.* Because the Ward Vassal was anciently in the Custody of and educated by the Superior.

No private Deed of a Ward Vassal, without the Superior's Consent or Appointment of Law, can burden the Fee while it is in the Hand of the Superior by the Ward. So that a Service of Thirlage, Ways or the like are not effectual against the Superior or his Donatary, unless introduced by Prescription of 40 Years or immemorial Possession, to which all Parties interested are presumed to have consented by so long forbearance to use at least civil Interruption. Stair Lib. 2. Tit. 4. §. 36. Vers. Thus it appeareth. Nor doth the Setting of Marches by Consent of the Vassal, or by Cognition of a Judge, without Consent of the Superior, prejudice him during the Ward. Feb. 1662 L. Ferphichen contra. Except the Marches have stood unquarrelled within the Years of Prescription. Craig Feud. Lib. 2. Tit. 20. §. 9. relates, that the Superior anciently

had

had the Ward with the Burden of paying the Annualrents of the Vassal's heretable Debts. Which is the Custom of France and a reasonable one too. But now with us the Vassal's Debts do not affect the Fee during the Ward. 21 March 1629 Weems contra L. Kinoraigie. Stair Feud. Vers. 1. 1. the Personal. Rentals and Tacks set by the Vassal have only this Effect, that the Tenants cannot be removed till the next Whitsunday after the Ward falls they paying to the Superior the accustomed Duty; After which Term they may be dispossessed and their Tacks sleep during the Ward; but revive when it is ended against the Letter and his Heir, to take Effect for so many Years as were cut off by the Ward. Act 26. Parl. 1. 4.

The Buyers of Land are obliged to stand to Tacks set by their predecessors and Authors in infra Pag. Sir James Stewart (Feud. Ward) says that a Wadset of Ward Lands bearing a Backtack in Favour of the Grantor, falling in Ward by the Wadsetters Death; the Debtor who granted the Wadset is not withheld from the Benefit of his Backtack: Because in a Manner consented to by the Superior and the Superior can at most require the Backtack Duty, which yet the Heir of the Wadsetter may cut off by requiring his Money. ~~But~~ But yet where the Casualty of Ward fell by the Death of a Wadsetter who in the Body of the Wadset had given a Backtack to the Grantor of the Wadset, for Payment of the Annualrent of his Money, the Wadset was confirmed by the Superior: The Superior was found to have Right to the full Rents and Duties of the Lands during the Minority of the apparent Heir, and was not restricted to the Backtack Duty, albeit the Vassal could get no more than that Backtack Duty to which only he had Right. Because the Backtack being only a private Paction betwixt the Grantor and the Receiver of the Wadset, could not defend against the Casualties of Ward and Marriage, more than other Tacks or safe Investments. But it was not determined, whether the Wadsetter would have any Recourse against the Heritor for his Damage by falling of the Ward; or if the Heritor should have Recourse against him for his Damage thro' being excluded from the surplus Rent over and above Payment of the Backtack Duty. 15 Feb. 1600 L. Chancellor contra Brown. But Ward is restrained by Force of the Vassal's Relief Hope min. Pract. Tit. Ward & Non-entry §. 119. Stair Lib. 2. Tit. 4. §. 36. Or by the Courtesy of a Vassal's Husband. Stair Feud. Feuds of Ward Lands held of any Superior whatsoever, do not without his Consent exclude Ward or other Casualties of Superiority, except such Feuds as were granted during the several Times they were allowed. Stair Feud. Other Feuds have no Effect to exclude the Superior from Ward or Non-entry more than Tacks. Stair Feud. Tit. 11. §. 15. infra All Investments holden