

R E C O G N I T I O N .

1569. *March 17.* BALFOUR *against* BALFOUR.

No 1.

AN infeftment of annualrent, above half the value of the lands, was found to infer recognition for the first time, it having been formerly otherwise determined, because the vassal was not changed, which was thought the great cause of this penalty.

Fol. Dic. v. 2. p. 313. Maitland.

* * This case is No 9. p. 7855. *voce* KING.

1590. *February —.* Lord LINDSAY *against* HAMILTON.

No 2.

THE Lord Lindsay pursued for recognition of certain lands of the barony of Abercorn, holden ward of the said Lord, analzied by James Hamilton. The reason of recognition was founded only upon a part of the lands, which the said James held of the said Lord, so the said Lord passed from any alienation but of the lands of only. It was *excepted* peremptorily against the summons, That there was no recognition by alienation of the said lands of because, conform to the law of recognition, and practice observed thereintill, the most part of the lands that are holden of the superior, in ward, ought to be analzied, yet true it was, the said James held the lands of only as a ten merk-land; and also held all the rest of the said lands, which were thirty-eight merk-lands, in uno infeofamento, et in una tenendria, et in uno reddendo; and so the libel concluding and assuming only upon the , which was but a ten merk-land, et non plus quam dimidium totius, prout requiritur ut res cadat et ad superiorem dominum revertatur, could never make the said lands to be recognosced, and fall into the superior's hands. It was *replied*, That albeit the said James held the said lands contained all in one

Found that in computing recognition, all such lands are to be understood as are under one infeftment, and under one duty, though not united.

No 2. charter, and for one duty, yet, in respect the said lands lay discontinuous, and there was no union, it could never save the defender from the fall of recognition, if he analzied; nam ut sasina fuerunt tenementa diversa, et non unita. And also, if a lord or baron hold of the King three or four baronies in ward, if he analzie most part of any one of them, the same may be recognosced, and fall in the King's hands, nam quæ est ratio totius quoad totum, eadem est ratio partis quoad partem, et si vasalus totum feudum alienaverit, totum omittit, ut in F. Lib. 2. T. 38. De vasallo qui contra constitutionem Lotharii.

THE LORDS, after long reasoning at the bar, and amongst themselves, found the exception relevant, in respect of the charter and disposition, which was, that all that was contained in one infeftment, and under one duty, albeit there was no union alleged.

Fol. Dic. v. 2. p. 313. Colvil, MS. p. 459.

1591. December —. KING'S ADVOCATE *against* The Earl of CASSILIS.

No 3.
Alienation in favour of the nearest heir does not infer recognition.

A brother was not accounted nearest, where the party being young, and married, was *in spe* to have children.

THE King's Advocate, and Mr David Mackgill, his son, as donatar to the gift of recognition of the lands of Culzean, pursued the Earl of Cassilis and Sir Thomas Kennedy, tutor of Cassilis, to hear and see the L. 20 land of Culzean decerned to come under recognition, by reason of alienation made thereof by Gilbert Earl of Cassilis, to the said Sir Thomas, his brother-german, they holding ward of the King. *Excepted*, That they fell not under recognition by the reason foresaid, because, at the time of the making of the said alienation, the said Sir Thomas was heir-apparent to the Earl, he having no lawful children procreate of his own body; and therefore it could not be counted an alienation *tanquam extraneæ personæ*, seeing he was in the mean time *hæres successurus*. *Replied*, That the Earl was all the time married, and so *habebat sub spe hæredes de suo corpore*: Likeas, he thereafter procreated children that succeeded him, so that his brother could not be accounted his nearest and apparent heir, as long as he was in hopes of children, being young and married. THE LORDS repelled the exception, and thought Sir Thomas could not be counted my Lord's nearest heir, in respect of the marriage, and children procreated thereafter.

Fol. Dic. v. 2. p. 315. Spottiswood, (RECOGNITION.) p. 251.

* * Colvil reports this case ::

THE King's Advocate, and Mr David M'Gill, his son, as donatar to the gift of recognition of the lands of Culzean, to be decerned to come under recognition, because there was alienation made of the said lands, which were holden