

* * * Durie reports this case :

IN a redemption of lands, wherein the son was infeft by the father under reversion, the reversion bearing; 'whensoever the father should redeem from 'him,' not making mention of his heirs; the father, after decease of his son, redeeming from the apparent heir to his son, no party defender compearing, and the Clerk advising with the LORDS, if this reversion of this tenor should be effectual, to redeem from the apparant heir of the son; the LORDS found, That albeit the reversion made mention of a power to redeem from the son by the father, and bore not these words 'from the son's heirs and assignees,' yet that the father had power by the said reversion after the decease of the son, albeit there was no redemption used by the father, while the son lived, to redeem also thereby from his apparent heir, and that the reversion was not personal, so as it became extinguished by the son's decease.

Clerk, Hay.

Durie, p. 490.

No 19.

1662. February 19. LORD CARNEGIE against LORD CRANBURN.

THE Lord Carnegie being infeft in the barony of Dirleton, upon a gift of recognition by the King, pursues a recognition against the Lord Cranburn, because the late Earl of Dirleton, holding the said barony ward of the King, had, without the King's consent, alienated the same to Cranburn, and thereby the lands had recognized.—The defender *alleged*, first, No process, because he is minor, *et non tenetur placitare super hæreditate paterna*; 2dly, The recognition is incurred by the ingratitude and delinquency of the vassal; yet *delicta morte extinguntur*; so that there being no other sentence nor litiscontestation against Dirleton in his own life, it is now extinct, which holds in all criminal and penal cases, except in treason only, by a special act of Parliament.

THE LORDS repelled both the defences, the first, in respect that the defender is not heir, but singular successor, and that there is no question of the validity of his predecessor's right in competition with any other right but the superior's; the other, because recognition falls not as a crime, but as a condition; implied in the nature of the right, that if the vassal alienate, the fee becomes void.

Fol. Dic. v. 2. p. 74. Stair, v. 1. p. 103.

No 20.

A declarator of recognition may be pursued after the vassal's death.

1666. July 14. CRANSTON against WILKISON.

BETWIXT Cranston and Wilkison it was found, That a person being conveyed as representing his father, who was alleged to be vitious intromitter to the pur-

No 21.

Vitious intromission not sustained after the in-