

No 15.

of the nature of the King's causes, which, by the regulations, and act of Parliament confirming them, have that privilege; and that because it dipt upon the crime of falsehood, and the pursuer offered formally to improve it, and interest reipublicæ ne delicta maneat impunita, and so that the probation perish not by the delaying it. But declared, where improbation is adjected to reduction, without design of investigating a crime, but only to force production, or to make the certification more effectual and strong. that they would not anticipate the roll in such improbations, but they behoved to stay their ordinary course of coming in. See APPENDIX.

Fountainball, v. 1. p. 18.

* * Stair reports the same case :

February 14. 1678.—ARBUTHNET of KNOX, as donatar of the recognition of the lands of Knox, by a disposition and infeftment of fee by Colonel Barclay to his Lady, doth thereupon pursue declarator of recognition. The defender *alleged, imo*, That the recognition was not incurred by this infeftment, because it was never accepted, nor made use of by the defenders; *2do*, Because it was only conditional, failing heirs of the disponer's body, and so was in effect but a substitution. The pursuer *answered*, That it was the deed of the vassal, infefting another in his ward-fee, without the superior's consent, which inferred recognition, and took place whether it was accepted or not. Neither is this a substitution, but a conditional disposition not granted in favour of the disponer and the heirs of his body, which failing, to his Lady, but principally to her, in case there were no heirs of his body. Both which points were decided in the case of Lady Carnegy and Cranburn, No 7. p. 13380. THE LORDS repelled the defences, and sustained the declarator. The defender further *alleged*, That these lands being taken by her husband to himself, and her in conjunct-fee, and they thereon infeft before this disposition inferring recognition, the same could not exclude her conjunct-fee, whereunto the superior did receive her, and which is equivalent to a confirmation.

THE LORDS found, That the defender's liferent, by her conjunct-fee before the disposition and infeftment inferring recognition stood valid, notwithstanding of the recognition.

Stair, v. 2. p. 613.

No 16.

1680. *July 12.*BUCHAN *against* BUCHAN.

JAMES BUCHAN of Ockhorne pursues a declarator of recognition *against* his Brother, BUCHAN of Auchmacoy. THE LORDS found the base deeds done by the son, in favours of strangers, sufficient to infer recognition with his own base infeftment, though his own base right *per se* was not sufficient, because he

RECOGNITION.

1339I

was apparent heir, and the deeds flowing from him were not sufficient *per se*, because he was the King's vassal. This was formerly decided in 1674, Lord Lyon against Forbes of Auchintoul, No 13, p. 13387.

No 16.

Fol. Dic. v. 2. p. 315. Fountainhall, MS.

1681. *January 26.* EDIE *against* THOIRS.

No 17.

THE smaller servitudes are sufficiently constituted by prescription, so as to be effectual against the superior, to whom the lands return by recognition.

Fol. Dic. v. 2. p. 216. Stair.

* * * This case is No 76. p. 6518., *voce* IMPLIED DISCHARGE & RENUNCIATION.

1681. *February 23.* HAY *against* CREDITORS of MUIRIE.

No 18.

RECOGNITION is not incurred, unless the major part of the ward-fee be alienated by deeds consisting together at the same time.

1681. *July 7.*—AN infeftment for relief of cautionry, being only conditional in case of distress, was found not to be like an infeftment of annualrent for a pure debt, to be computed as an alienation for the full sum in the bond, unless distress had followed; and the cautioners having paid the sum, and taken assignation, without distress, made no difference; but it was found, that it might be conjoined as a conditional distress by hazard; so that, for instance, if the half of the fee should be alienated, such an infeftment for relief might be computed at some certain value to infer an alienation of the major part; for the Lords thought, that even a wadset, though of the whole barony, if there was a back-tack for payment of the annualrents, would not infer recognition, unless the sum exceeded the value of half of the barony.

1683. *March 15.*—BUT infeftment for relief, bearing, that the cautioner was distressed, and therefore disposing for his relief, declaring his entry to be at a certain term, and that he should apply his intromissions towards payment of the debt; was a sufficient ground of recognition *quoad valorem* of the sum.

DISCONTIGUOUS lands were all contained in one charter, bearing one reddendo. It was *pleaded*, That the major part of the whole must be alienated to infer recognition of any part. *Answered*, Lands are united, either naturally, when contiguous, or civilly, when discontinuous. Lands are united by a formal clause of union into one barony or tenement, and the charter in question con-