

1682. *January 5.* HOMER MAXWELL of KILBAIN *against* GRIERSON of CAPINOCHE.

IN Homer Maxwell of Kilbain his competition with Grierson of Capinoch; the Lords, on Harcou's report, preferred Homer Maxwell, and found Capinoch's interest, *viz.* his author Crichton of Crawfordstone's seasine, was not a sufficient title to bring him in, *in hoc statu processus*; without prejudice to him to pursue upon his right, as accords. *Vol. I. Page 168.*

1680, 1681 *and* 1682. JOHN HAY of MUIRIE *against* BALLEGERNO, POURIE, and Other CREDITORS of the last LAIRD of MUIRIE.

See the prior parts in the Index to the Decisions.

1680. *December 16.*—IN John Hay's declarator of recognition against the Creditors, (27th Nov. 1680;) the Lords found the inhibition used by Ballegerno against the last laird of Muirenk, being used alone, did not hinder but, by his contracting of debts posterior to the inhibition, and granting base infestments thereon, the casualty of recognition existed, and fell in his Majesty's hands; and that the King is not concerned, though his ward vassal be standing inhibited.

But, at this rate, none will lend to ward vassals; because, in despite of their diligence, (except only a confirmation,) they can make their lands recognosce when they please.

Then the creditors ALLEGED,—The deed on which the recognition was incurred was reduced at their instance before the gift of the recognition.

The Lords also repelled this; because, in the case of my Lord Halton with Northesk, they found the recognition of the lands of Craig incurred, though the disposition whereon it depended was reduced in the Parl. 1661, *ex capite ebrietatis*. *Vide* 23d Feb. 1681.

Yet the Lords had found, if the disposition, the ground of the recognition, was subscribed or delivered on death-bed, it could not infer recognition; 20th *July* 1669, *Barclay*. See also a contrary decision in Dury, 16th *March* 1627, *L. Balmerino*.

And, in this case of John Hay, the Lords found *non refert* whether the deeds inferring the recognition were done by the person inhibited, or by his heirs or assignees, being vassals for the time. *Vol. I. Page 122.*

1681. *February 23.*—IN John Hay of Muirie's declarator of recognition, against Fotheringham and others, (16th Dec. 1680,) for instructing that the lands were recognosced; John Hay, the donatar, produced sundry base seasines. Against which it being objected, that they were not probative without the charters as their warrants, but allenarly *assertio notarii*: 2do, that they were but extracts out of the registers, and not the principal seasines:

ANSWERED,—The King's donatar to the recognition cannot be supposed to have the principal seasines, or the base subaltern charters; for they are not to be got at the chancellary, as donatars of escheat may find the hornings in the register.