

No 21.

pected out of the other lands ; *5to*, THE LORDS repelled the allegiance, that the infeftments were in trust, as it was qualified, viz. that they were in the vassal's charter-chest, and that he detained the possession, except that the vassal's fraud or dole were instructed, or that the gift were to the vassal's behoof ; *6to*, THE LORDS repelled the defence founded upon the resignation made by old Cromarty in favours of his son, albeit bearing a confirmation of what relates to rights made to the vassal, and not to rights made by the vassal ; *7mo*, Repelled the defences founded upon the inhibition, which was prior to the deeds made use of for making up the recognition ; *8vo*, Found, that the infeftments that were *habili modo* extinguished, before the concurrence of the major part, cannot come *in computo* ; *9no*, That sasines which are intrinsically null are not to be respected as grounds of recognition.

*Sir P. Home, MS. v. I. No 473.*

No 22.

1683. *March*. EARL OF ABERDEEN, Lord Chancellor, *against* ———.

FOUND that a wadset of ward lands for a small sum, under the value of the half of these lands, inferred recognition, though it was redeemable upon payment of a referable sum, in respect the property of the whole was disposed ; and it was not like an annualrent, which (as but a servitude out of lands) is only considered with respect to the value and burden on the lands.

*Fol. Dic. v. 2. p. 314. Harcarse, (RECOGNITION.) No 827. p. 235.*

No 23.

1685. *March 17*. THOIRS *against* FORBES.

IN a declarator of recognition upon a base infeftment; it being *alleged*, That a father had conveyed his estate to the son of the eldest of his three daughters, who was therefore *alioqui successurus* ; the LORDS found this sufficient to as-soilzie from the recognition *in toto*, notwithstanding the existence of the two other sisters.

*Fol. Dic. v. 2. p. 315. Fountainball.*

\* \* \* This case is No 94. p. 2754., *voce* COMPETENT.

No 24.

1686. *February 3, and 4. and 1687. July.*

EARL OF LAUDERDALE *against* VASSALS OF DUNDEE.

IN a question, whether base infeftments, long since prescribed, so that the debt could not be exacted, might, nevertheless, concur with others which were