

- 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

RECOGNITION.

13395

not prescribed, to make the lands recognosce; the LORDS found, that, notwithstanding the prescription, they might concur, the last ground being within 40 years; for they found, that the debt might be extinct as to the effect of execution, and yet not as to the casualty of recognition, for *contra non valentem agere non currit præscriptio*; but so it is, that the feudal delinquency of recognition is not incurred till the major part of the barony be alienated by base infeftments. Now, supposing the last base infeftment to be within 40 years, and every one of the grounds and steps, which make up the recognition, being supposed to be within 40 years of each other, the action could not exist till the half, and a little more, were alienated, and so could not begin to prescribe till then, since *actioni nondum nata non præscribitur*.

No 24.

A similar decision is reported by Forbes, 25th July 1712, Moncrieff against Heirs of Ballo, No 168. p. 10932, *voce* PRESCRIPTION.

THE LORDS sustained all base infeftments after the 12th of April 1654. (the date of the Usurper's ordinance about ward-lands) as lawful, and not to be the ground of recognition, unless the vassal continued after the King's restoration without demanding confirmation.

*Fol. Dic. v. 2. p. 314. 315. Harcarse.*

\*\*\* This case is No 63. p. 6485., *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1687. June. KER of Littledean *against* LAW.

IN a declarator of recognition of ward-lands, which were wadset with a back-tack, for a sum under half the value; *alleged* for the defender, That till the back-tack be declared void, and brought to the case of a proper wadset, the back-tack duty only is to be considered as the burden. *Answered*, It is the vassal's contempt in disposing the whole lands, and not the value of the back-tack duty that infers recognition. THE LORDS repelled the defence.

No 25.

*Fol. Dic. v. 2. p. 314. Harcarse.*

\*\*\* This case is No 40. p. 6437., *voce* IMPLIED DISCHARGE & RENUNCIATION.

1725. January 13.

Sir JAMES HALL of Dunglas, *against* JOHN CRAW Writer in Greenlaw.

MARGRAET TAIT succeeded her brother James, by a precept of *clare constat* from the superior, in a ward-fee, which she disposed in her contract of marriage to James Craw her husband, his heirs and assignees whatsoever, heri-

No 26.

Where a wife, in her contract of mar-