

part of both. *2do*, It was further *alleged* for the defender, That the wadset, though it was not feu but blench, yet being granted after the year 1640, when wards were abolished by the powers then in being, the vassal should be excused from the effect of the feudal delinquency; especially seeing, before the King's restoration, there was a requisition of the wadset sums, and apprising led of the lands, which creditors might lawfully do.

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THE LORDS, before answer, allowed trial to be made of the worth of the lands wadset.

Harcarse, (RECOGNITION.) No 283. p. 229.

1683. *February and March.*

KING'S ADVOCATE *against* CREDITORS OF CROMARTY.

No 21.

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

A wadset being granted of several distinct tenements, one of which held ward, the ward-lands were found to recognosce, though the other subjects were of more value than the wadset sum.

Redeemable rights though the debt be paid before the concurrence of other alienations, yet if not actually renounced, do come *in computo* to make up a major part, and to infer recognition.

Sasines which are intrinsically null, as wanting essential solemnities, are not to be respected as grounds of recognition.

Fol. Dic. v. 2. p. 313. 314.

* * P. Falconer's and Harcarse's reports of this case, are No 60. p. 6467.

voce IMPLIED DISCHARGE AND RENUNCIATION.

* * Sir P. Home also reports the same case :

IN the declarator of recognition at the instance of his Majesty's Advocate against the Creditors of the estate of Cromarty, the LORDS decided these points; *1mo*, That alienations, though without consent of the superior, yet, if they be confirmed before the major part be analized, cannot recognosce themselves, nor come *in computo* to make the recognition as to other lands; *2do*, That a confirmation, after a major part is alienated, and before the gift, doth secure the rights confirmed, but must come *in computo* to make up the major part, for the recognoscing of what is not confirmed; *3tio*, That a *novodamus* doth so secure anent a recognition, that all the alienations before the *novodamus* cannot come *in computo* to make up the ground of recognition; *4to*, That notwithstanding of the infeftments upon which recognition is craved be likewise of lands of different holdings, and belong to different heritors, must be considered as a ground of recognition *quod valorem* of the whole sums whereupon infeftment was taken, without respect to the relief that might be ex-

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pected out of the other lands ; 5^{to}, 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 ; 6^{to}, 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 ; 7^{mo}, Repelled the defences founded upon the inhibition, which was prior to the deeds made use of for making up the recognition ; 8^{vo}, Found, that the infeftments that were *habili modo* extinguished, before the concurrence of the major part, cannot come *in computo* ; 9^{no}, 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