

## S E C T. IV.

## Gift of Recognition.

1635. November 27.

BLACK *against* PITMAIN.

No 12.

A GIFT or recognition without declarator, although the donatar of recognition obtain possession, cannot take away a feu infestment, whereof the feuar was in possession.

*Fol. Dic. v. 1. p. 229. Auchinleck, MS. p. 180.*

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1699. November 24.

BALMERINO *against* TOWN of EDINBURGH.

No 13.

THE master of Balmerino, as baron of Restalrig, pursues a reduction and improbation against the Town of Edinburgh, of their right to the mills on the Water of Leith. *Alleged*, The active title is not valid to force a production, being only a charter and sasine flowing upon a gift of recognition from the King, and the gift never yet declared. *Answered*, No necessity of a declarator, because he was in peaceable possession. *2do*, It contained a *novodamus*. *Replied*, If the recognition should be found not incurred, the *novodamus* would fall in consequence; and one might as well pursue a special declarator of escheat without first obtaining a general. THE LORDS refused to sustain process on this title.

*Fol. Dic. v. 1. p. 229. Fountainball, v. 2. p. 69.*

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## S E C T. V.

Divorce.—Failzie.—Redemption.—Extinction by Intromission.—  
Gift of Forfeiture.

1579. February 6.

LADY RESTALRIG *against* THE LAIRD.

No 14.  
Aftersentence  
of divorce  
pronounced  
*propter culpam  
mariti* the  
wife may im-  
mediately en-  
ter to the pos-

THE Lady Restalrig wairnit the laird of Restalrig, some time her husband, she being divorced fra him *ex culpa viri*, to flit and remove fra certain lands. The laird *answerit*, that albeit he was divorced, yet there was no declarator given, wherefor he should not bruik the lands that she was in; and of the practick that had passed before, ay after the sentence of divorsement pronounced and