

RECOGNITION.

13379

ward of the King's Majesty, by Gilbert Earl of Cassilis to Sir Thomas Kennedy his brother-german. It was *excepted*, That the lands fell not under recognition, because of the disposition made to the said Sir Thomas; because, at the making thereof, the said Sir Thomas was his nearest and apparent heir, he having no lawful bairns procreated of his own body, and so the alienation made to him, who was heir before, to succeed to him, could not be accounted *tanquam extraneæ personæ*. To this was *answered*, That the said Earl, at the making of the said alienation, was married, and so being married *habebat hæredes de corpore suo sub spe*; and so his brother-german could not be accounted to be his nearest and apparent heir, so long as he is joined in marriage, and had any hope to get bairns procreated of his own body, as he thereafter procreated bairns, and the Earl of Cassilis that is present Earl. THE LORDS found that the said Sir Thomas, at the time of making the alienation, could not be accounted his nearest apparent heir, in respect of the marriage, and the bairns procreated thereafter.

No 3.

Colvil, MS. p. 465.

1612. February 28.

RAE against Lord KELLIE.

No 4.

THE LORDS found an infeftment granted by the goodsire to the grandchild, with consent of the son, to be a cause of recognition, because the grandchild was not immediately to succeed.

Fol. Dic. v. 2. p. 315. Haddington. Hope.

* * * This case is No 53. p. 6459. *voce* IMPLIED DISCHARGE.

1623. March 25.

L. HUNTHILL against RUTHERFORD.

No 5.

Declarator of recognition.

IN an action betwixt L. Hunthill and Rutherford, an infeftment being given of lands fallen by recognition, and thereupon decret of removing obtained against the tenants; thereafter, upon resignation by him who acquired the right of recognition, another being infeft in these lands, and pursuing action of succeeding in the *vice*, against one who had entered to the possession of him, against whom the said decret of removing was obtained before, as said is, at the author's instance; who compearing, and *alleging* the pursuer's right and sasine of the lands, to be no sufficient right and title, which could give him the right to the lands, or to produce this action, because it depended upon the right of recognition, acquired by his author, which was never declared, and no declarator of recognition being obtained upon the said first infeftment, the same, and all other subaltern rights depending thereupon, was not sufficient; this

- No 5. allegiance was repelled, in respect of the decret of removing obtained, as said is, by the pursuer's author, and of the pursuer's right proceeding upon resignation of his author, concerning the validity whereof, the pursuer could not, in this judgment of succeeding in the *vice*, be compelled to dispute.

Alt. *Belshes.*

Durie, p. 61.

- No 6. 1627. *March 10.* Lord BALMERINOC *against* SETON.

IN an action of reduction of the Lord Balmerinoc against Seton of Pitmedden, the LORDS found, that a party who had comprised his debtor's lands, and was infest therein, and who had served inhibition before his comprising, might pursue reduction of infestments, posterior to his said right, made by his said debtor since his comprising and sasine, which posterior right was the cause why the said debtor's lands were recognised; and consequently that he might reduce the said right, being the grounds of the said recognition, with the charter and infestment of recognition, *ad hunc effectum* only, that he might be paid of his own true debt, for which he had comprised and was infest.

Act. *Stuart.*

Alt. *Baird.*

Clerk, *Hay.*

Durie, p. 288.

- No 7. 1663. *January 30 & February.* Lady CARNEGIE *against* Lord CRANBURN.

A DISPOSITION, failing heirs-male of the granter's body, with sasine upon it, was found to infer recognition; because the precept directed to give present state and sasine, and so this could only be understood to have the import of a resolute condition, in case of the after-existence of heirs-male.

Recognition takes place in taxed ward as well as simple ward.

With regard to an infestment *a me* to be holden of the superior, it was *objected*, That the same could not infer recognition, being null till confirmation. *Answered*, The vassal here has done *quantum in se erat*, nor can the implied condition *si dominus consenserit* be understood suspensive, where possession is directly given by the sasine; and if it be understood a resolute condition, it does not stop the alienations. THE LORDS repelled the objection.

Recognition was found incurred by a disposition to the vassals own grandchild, who was not apparent heir at the time, though afterwards, by the death of an elder brother, he became apparent heir.

Fol. Dic. v. 2. p. 313, 314, & 315. Stair. Gilmour.

* * * The particulars of these cases are No 58. p. 10375. *voce* PERSONAL AND TRANSMISSIBLE, and No 11. p. 7733. *voce* JUS QUÆSITUM TERTIO. See also No 20. p. 10339. and No. 1. p. 7909.