

1681. January 28. The LAIRD OF DUN against SCOTT.

No 48.
Found in
conformity
with Hepburn
against Yule,
No 41.
p. 9096.

THE LAIRD OF DUN having obtained a gift of recognition of the lands of —, pursues declarator against the present heritors, who *alleged*, *imo*, No process, because the pursuer is not infest upon the gift of recognition; for recognition being in effect a reduction, it is only competent upon a real right by infestment, and it uses not to be pursued till the donatar be infest. It was *answered*, That this declarator is founded upon the King's right as superior, and it is not a declarator of the donatar's right to the land, but a declarator that the vassal hath lost his right, which requires no infestment to the donatar. "THE LORDS sustained the declarator at the donatar's instance, though not infest." *2do*, The defender further *alleged*, That the recognition was incurred by the alienation of his author, who was bound in warrandice, and therefore he ought to be called. "THE LORDS repelled this defence, seeing the present heritor the King's vassal was called, who might intimate the plea to his author if he pleased." *3tio*, The defender further *alleged*, That this declarator being in effect a reduction, *minor non tenetur placitare de hæreditate paterna*. It was *answered*, That this holds only in the defects in competitions of the vassals' rights, but in no interest to the superior.

THE LORDS repelled also this defence, but found no process till the minor's tutors or curators were called. See TITLE TO PURSUE.

Fol. Dic. v. 1. p. 590. Stair, v. 2. p. 847.

* * * Fountainhall reports this case :

A DONATAR of recognition pursuing a declarator, alleged for the pursuer, produces no title but a signature or gift, and till he were infest he had not a complete interest. This the LORDS repelled in respect of the King's Advocate's concurrence, the King having right *jure superioritatis*, without any title but his *sine jure coronæ*. *2do*, *Alleged*, All parties having interest are not called, *viz.* Logie the defender's author. This the Lords sustained. *3tio*, The defender was minor, and the lands were heritage, and so *non tenetur placitare*. This was repelled in the recognition, because it was the declaring a feudal delict. *4to*, The tutors and curators were not called. This was also sustained, and the author's heirs and the tutors are ordained to be cited : And found it not sufficient, that the representatives of him were called, by whose deed the recognition was incurred.

Fountainhall, MS.