

- 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.