

giving that power to his son, doth by his son dispoſe to a ſtranger ; and as this is quadrant to law, ſo if the contrary were ſuſtained, here were an approved way laid down to evacuate all recognitions by diſpoſing to the eldeſt ſon, and he to ſtrangers.

THE LORDS found the libel relevant, and ſuſtained the recognition upon the ſon's alienation of the major part.

In this caſe, the ſon did not purge the diſpoſitions made by him, during his father's life, and did ſurvive his father, and ſo became directly vaſſal ; but it did not appear, whether he was actually ſerved and infeſt in the lands as vaſſal.

*Fol. Dic. v. 2. p. 315. Stair, v. 2. p. 275.*

No 13.

1676. *January 7.* COCKBURN *against* COCKBURN.

SIR James Cockburn of Ryſlaw purſues declarator of recognition of the lands of Eaſter Prantunan, holden ward of the King, as fallen in recognition, by an infeſtment granted by James Cockburn of Ryſlaw, to Ninian Cockburn his natural ſon, *anno* 1643 ; and calls Cockburn of Chouſlie, as apparent heir to Ryſlaw ; who *alleged* abſolvitor, becauſe, by the act of Parliament 1641, it was lawful to ſet feus of ward-lands holden of the King, and albeit theſe acts be reſcinded, yet there is a *ſalvo* of rights acquired by them ; and though they were not, the granting of ſuch rights at that time could be no contempt or ingratitude againſt the ſuperior. It was *answered*, That though there was no contempt at that time, yet it became a contempt, in ſo far as no application was made to the King, or Exchequer, for a confirmation after his return, and after the reſcinding of theſe acts, as hath been frequently ſuſtained by the Lords.

THE LORDS repelled the defence, in reſpect of the reply.

*Fol. Dic. v. 2. p. 315. Stair, v. 2. p. 393.*

No 14:  
Recognition ſuſtained upon a wife's infeſtment of ward, in the year 1643, though, by the laws then ſtanding ſuch were allowable, ſeeing after the reſcinding of theſe laws, there was no application made to the King for confirmation.

1678. *February 14.* ARBUTHNOT of Know *against* MARGARET STRAITON.

THE LORDS found the lands recognoſced, but the Lady *alleging* ſhe had a right of liferent, by virtue of the firſt infeſtment of theſe lands granted to her huſband, whereby he acquires the lands to himſelf and her, the longeſt liver of them two, whereby they are publicly infeſt, the LORDS ſuſtained this infeſtment to continue her liferent.

*Fol. Dic. v. 2. p. 316. Fountainhall, MS.*

No 15.

\* \* \* The ſame caſe is afterwards mentioned alſo by Fountainhall.

*November 6. 1678.*—In the improbation purſued by Alexander Arbuthnot againſt Margaret Straton, for improving a bond granted to her huſband betwixt her contract and marriage, the LORDS declared they would ſummarily call it in the Inner- houſe, only upon fourteen days advertisement, as being

No 15.

of the nature of the King's causes, which, by the regulations, and act of Parliament confirming them, have that privilege; and that because it dipt upon the crime of falsehood, and the pursuer offered formally to improve it, and interest reipublicæ ne delicta maneat impunita, and so that the probation perish not by the delaying it. But declared, where improbation is adjected to reduction, without design of investigating a crime, but only to force production, or to make the certification more effectual and strong. that they would not anticipate the roll in such improbations, but they behoved to stay their ordinary course of coming in. See APPENDIX.

*Fountainball, v. 1. p. 18.*

\* \* Stair reports the same case :

*February 14. 1678.*—ARBUTHNET of KNOX, as donatar of the recognition of the lands of Knox, by a disposition and infeftment of fee by Colonel Barclay to his Lady, doth thereupon pursue declarator of recognition. The defender *alleged, imo*, That the recognition was not incurred by this infeftment, because it was never accepted, nor made use of by the defenders; *2do*, Because it was only conditional, failing heirs of the disponer's body, and so was in effect but a substitution. The pursuer *answered*, That it was the deed of the vassal, infefting another in his ward-fee, without the superior's consent, which inferred recognition, and took place whether it was accepted or not. Neither is this a substitution, but a conditional disposition not granted in favour of the disponer and the heirs of his body, which failing, to his Lady, but principally to her, in case there were no heirs of his body. Both which points were decided in the case of Lady Carnegy and Cranburn, No 7. p. 13380. THE LORDS repelled the defences, and sustained the declarator. The defender further *alleged*, That these lands being taken by her husband to himself, and her in conjunct-fee, and they thereon infeft before this disposition inferring recognition, the same could not exclude her conjunct-fee, whereunto the superior did receive her, and which is equivalent to a confirmation.

THE LORDS found, That the defender's liferent, by her conjunct-fee before the disposition and infeftment inferring recognition stood valid, notwithstanding of the recognition.

*Stair, v. 2. p. 613.*

No 16.

1680. *July 12.*BUCHAN *against* BUCHAN.

JAMES BUCHAN of Ockhorne pursues a declarator of recognition *against* his Brother, BUCHAN of Auchmacoy. THE LORDS found the base deeds done by the son, in favours of strangers, sufficient to infer recognition with his own base infeftment, though his own base right *per se* was not sufficient, because he