

No 21.

pected out of the other lands ; *5to*, THE LORDS repelled the allegiance, that the infeftments were in trust, as it was qualified, viz. that they were in the vassal's charter-chest, and that he detained the possession, except that the vassal's fraud or dole were instructed, or that the gift were to the vassal's behoof ; *6to*, THE LORDS repelled the defence founded upon the resignation made by old Cromarty in favours of his son, albeit bearing a confirmation of what relates to rights made to the vassal, and not to rights made by the vassal ; *7mo*, Repelled the defences founded upon the inhibition, which was prior to the deeds made use of for making up the recognition ; *8vo*, Found, that the infeftments that were *habili modo* extinguished, before the concurrence of the major part, cannot come *in computo* ; *9no*, That sasines which are intrinsically null are not to be respected as grounds of recognition.

Sir P. Home, MS. v. I. No 473.

No 22.

1683. *March*. EARL OF ABERDEEN, Lord Chancellor, *against* ———.

FOUND that a wadset of ward lands for a small sum, under the value of the half of these lands, inferred recognition, though it was redeemable upon payment of a referable sum, in respect the property of the whole was disposed ; and it was not like an annualrent, which (as but a servitude out of lands) is only considered with respect to the value and burden on the lands.

Fol. Dic. v. 2. p. 314. Harcarse, (RECOGNITION.) No 827. p. 235.

No 23.

1685. *March 17*. THOIRS *against* FORBES.

IN a declarator of recognition upon a base infeftment; it being *alleged*, That a father had conveyed his estate to the son of the eldest of his three daughters, who was therefore *alioqui successurus* ; the LORDS found this sufficient to as-soilzie from the recognition *in toto*, notwithstanding the existence of the two other sisters.

Fol. Dic. v. 2. p. 315. Fountainball.

* * * This case is No 94. p. 2754., *voce* COMPETENT.

No 24.

1686. *February 3, and 4. and 1687. July.*

EARL OF LAUDERDALE *against* VASSALS OF DUNDEE.

IN a question, whether base infeftments, long since prescribed, so that the debt could not be exacted, might, nevertheless, concur with others which were