

No. 10. 1684. *January.* SHEARER *against* LORD SALTON.

In the action of recognition at the instance of Patrick Shearer *contra* the Lord Salton, the Lords found a confirmation granted by the Earl of Marischal, superior, could not defend against the recognition, being granted after he was denuded by expired apprisings.

Sir P. Home MS. v. 1. p. 546.

1688. *February 15.* LORD CHANCELLOR *against* BROWN.

No. 11. The ward was found to fall by the death of an improper wadsetter infest.
Harcarse.

* * * This case is No. 8. p. 3012. *voce* CONFIRMATION.

1707. *July 15.*

The CREDITORS of EDINGLASSIE *against* GORDON of CARNOUSSIE.

No. 12.
Recognition
inferred by
the deeds of
the reverser
during the
legal of an
apprising.

In the sale of Edinglassie, there arises a competition of creditors, wherein compareance is made for Gordon of Carnoussie; and for him it was alleged, That the lands of Carnoussie libelled in the sale ought not to be exposed to roup for Edinglassie's debt, because the same belonged to him, not only as being originally purchased by Sir George Gordon, his father, in life-rent, and to him, a second son, in fee, but more especially because he had obtained a gift of recognition thereof, incurred by deeds of alienation done by Ogilvie of Carnoussie, a former heritor, and thereupon had also obtained a declarator of recognition *in foro*.

The creditors repeated a reduction of that decret of recognition, in which they were not called, and alleged, *1mo*, Though Edinglassie, their author, was only life-renter, yet the disposition of Carnoussie was purchased by his money, and contained a faculty to redeem, burden, or impignorate, at his pleasure, whereby the creditors adjudgers from him have the same right as if he had explicitly exercised the faculty. *2do*, There was no recognition incurred by the deeds of Ogilvie of Carnoussie, because he was denuded by an apprising led by Forbes of Watertoun, in the year 1649, whereupon he was publicly infest before the said alienations; and it is certain, that recognition is only inferred by the deeds of the vassal, which holds as well in the case of apprisers within the legal, as after the expiration, because apprisers infest are vassals, and denude the former heritor; and so it has been several times found, as particularly, 20th July, 1671, Lindsay of Mount *sontra* Maxwell of Kirkconnel, No. 7. p. 16445.; and the like, 28th July, 1680, The King's Advocate *contra* Yeoman of Dryburgh, No. 9. p. 16446.; in both