

themselves, nor come *in computo* to make recognition as to any other lands. As to the *second* point, find the confirmations after the major part is alienated, and before the gift of recognition, does secure themselves, but must come *in computo* to make up the major part for the recognoscing of what is not confirmed. *3tio*, Find the *novo-damus* does so secure against the recognition, that all the alienations before the *novo-damus* cannot come *in computo* to make up the ground of the recognition. And find, *4to*, Notwithstanding the infestments whereupon recognition is required be likewise in lands of different holdings, as holding feu or blench, and belonging to different heritors, yet they must be considered as a ground of recognition *quoad valorem* of the whole sums whereupon the infestment was taken, without respect to the relief which may be expected out of those other lands. *5to*, Repel the allegiance, that the infestments were in trust; as it is condescended on, *viz.* that they were in the vassal's charter-chest, and that he retained the possession; except the vassal's dole and fraud were instructed, or that the gift were to the vassal's behoof. To the *6th*, The Lords repel the allegiance founded upon the resignation made by old Cromarty in favours of his son, albeit bearing a confirmation, in what relates to rights made to the vassal, and not to rights made by the vassals. *7mo*, Repel the allegiance founded on the inhibitions prior to some of the grounds of the recognition; as they had done *supra*, in Muirie's case. *8vo*, They find the infestments that were, *habili modo*, extinguished before the course of the major part, cannot come *in computo*. *9no*, They find that seasines intrinsically null are not to be respected as a ground of recognition.

But I think the not registration of the seasine, within sixty days, is not such an intrinsic nullity. Yet see Craig, *Feudorum lib. 3*, in the case of *Mackenzie and Bain*.

This, with John Hay of Murie's case, clears many debates that arose on recognitions. But the fourth and fifth articles of this interlocutor were looked upon as hard, and great stretches of this odious casualty of recognition. The fourth, because if the infestment be also furth of blench and feu lands, why should it be all cast upon the ward lands: only they say, the vassal *fecit omne quod in se erat*, by giving it also out of the ward lands; and that it is likewise out of others, does not diminish the vassal's ingratitude and contempt of his superior. The fifth was grudged at, seeing there cannot be a more pregnant qualification of a trust and a conveyance, than to find a right in a debtor's charter-chest; which presumes it paid and retired, or led to his behoof: unless another way, *quomodo* it came there, by borrowing or stealing it, &c., can be condescended on; as in Fergusson and Seaton of Carriston's case, in 1678.

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1683. February 24. WILLIAM CHIESLEY *against* WILLIAM GORDON and DR TROTTER.

MR William Chiesley, writer, having charged William Gordon and Doctor Trotter, for £100 Scots contained in their bond, on the account of Samuel Chiesly, his brother;—they suspended on this reason, that he had intromitted with more of Samuel's effects than would pay this sum; and he, on oath,

confessed £1200 Scots, but adjected qualities, that he had debursed it on funerals, &c.

The Lords, at the advising his oath, finding the articles with which he charged himself most gross, exorbitant, and uninstructed, they found there was more than room for compensing and taking away the said L.100 bond; and so suspended it simpliciter. *Vol. I. Page 223.*

1683. *February 27.* WILLIAM BAILLIE of TORWOODHEAD *against* FLORENCE GARDINER.

WILLIAM Baillie of Torwoodhead reducing a comprising led by Florence Gardiner against his father; the Lords found it null, because it was led for L.50 Scots more than was due; as was proven by two of his receipts produced.

The Lords now begin to look upon comprising as so odious, that they are but very bad and uncertain securities, if they have but the least crack or flaw in them; for, upon very minute informalities, they reduce them *quoad* penalties, sheriff-fees, and the expiration of the legal, and the accumulative annualrents; and only sustain them as a collateral security for principal, annualrents, and true debursed expenses: though this be done *ex officio maxime nobili*, like a trysting interlocutor; for, in strict law, they should either find them null or valid.

Then Torwoodhead craved he might count for the whole rent of these years whereof he uplifted a part, seeing he does not condescend on a legal impediment that debarred him from the rest.

But this cause being again heard on the 14th March 1683, in presence; the Lords sustained the comprising, because the granter of the receipts was only liferenter in the bond; though it bore a power to him to uplift it: as also found the granting of these receipts was not an entering to the possession of these lands so as to make him countable for the whole rents, but that he behoved only to count for his actual intromission. So that the Lords in effect altered and reversed their former interlocutor. *Vol. I. Page 223.*

1683. *March 8.* ROBERT BURNET *against* STEPHEN BURNTFIELD.

ROBERT Burnet, writer and commissary of Peebles, his charge against Stephen Burntfield being reported; the Lords ordained this point to be heard in presence,—If Stephen could be forced to confirm here money that was owing to a defunct Scotsman in England.

ALLEGED,—He should; because it was the interest and advantage of the defunct's creditors how much were here confirmed in Scotland, it making the larger subject liable to their payment. ANSWERED,—The Commissary's jurisdiction did not extend beyond Scotland; and what locally lay in England, the Englishmen, ere they would pay it, would have it confirmed in their Prero-