

RECOGNITION.

13379

ward of the King's Majesty, by Gilbert Earl of Cassilis to Sir Thomas Kennedy his brother-german. It was *excepted*, That the lands fell not under recognition, because of the disposition made to the said Sir Thomas; because, at the making thereof, the said Sir Thomas was his nearest and apparent heir, he having no lawful bairns procreated of his own body, and so the alienation made to him, who was heir before, to succeed to him, could not be accounted *tanquam extraneæ personæ*. To this was *answered*, That the said Earl, at the making of the said alienation, was married, and so being married *habebat hæredes de corpore suo sub spe*; and so his brother-german could not be accounted to be his nearest and apparent heir, so long as he is joined in marriage, and had any hope to get bairns procreated of his own body, as he thereafter procreated bairns, and the Earl of Cassilis that is present Earl. THE LORDS found that the said Sir Thomas, at the time of making the alienation, could not be accounted his nearest apparent heir, in respect of the marriage, and the bairns procreated thereafter.

No 3.

Colvil, MS. p. 465.

1612. February 28. RAE against Lord KELLIE.

No 4.

THE LORDS found an infeftment granted by the goodsire to the grandchild, with consent of the son, to be a cause of recognition, because the grandchild was not immediately to succeed.

Fol. Dic. v. 2. p. 315. Haddington. Hope.

* * * This case is No 53. p. 6459. *voce* IMPLIED DISCHARGE.

1623. March 25. L. HUNTHILL against RUTHERFORD.

No 5.

Declarator of recognition.

IN an action betwixt L. Hunthill and Rutherford, an infeftment being given of lands fallen by recognition, and thereupon decret of removing obtained against the tenants; thereafter, upon resignation by him who acquired the right of recognition, another being infeft in these lands, and pursuing action of succeeding in the *vice*, against one who had entered to the possession of him, against whom the said decret of removing was obtained before, as said is, at the author's instance; who compearing, and *alleging* the pursuer's right and sasine of the lands, to be no sufficient right and title, which could give him the right to the lands, or to produce this action, because it depended upon the right of recognition, acquired by his author, which was never declared, and no declarator of recognition being obtained upon the said first infeftment, the same, and all other subaltern rights depending thereupon, was not sufficient; this