No 17. said Laird of K. might not pursue him for the said spuilzie, because the said Ld. of Kinfawns had called for the said spuilzie, the plea dependent. It was *answered*, That as long as there was no sentence given upon another, he might call them he pleased for the said spuilzie. Which allegeance of the said Laird of Craigie was repelled. And albeit it was *alleged* by the said Laird of Craigie, That he was called for the spuilzie of certain goods alleged to be spuilzied from the Laird of Kinfawns by the Laird of Craigie his father, and were never intromitted with by the said young Laird, nor came never till his use; therefore he was not obliged to answer for the yearly profits of the said goods disponed by his father. It was *answered*, That the heir is obliged to answer for spuilzie, and the profits thereof, sicklike as the principal spuilzier. Which allegeance of the said Ld. of Craigie was repelled, in respect of the answer.

Maitland, MS.

*** Balfour reports the same case:

THE air of ony persoun, committer of ony spuilzie, may not be accusit criminally thairfoir; bot he may be callit and persewit civillie, siclike as the principal spuilziar, his predecessour, micht have been callit, albeit nane of the saidis spuilziet gudis come to his use and profit, bot the samin, all and haill, were disponit be his predecessour.

Balfour, (SPUILZIE.) *No* 9. *p.* 467.

No 18. 1610. *May* 30. HOG *against* BELL.

A WIFE being acted in the books of session of her parochin, to abstain from suspect company of a slanderous man, under a pecuniary pain; albeit her husband have consented to the act, she being therefore decerned by that session to have contravened that act, and being charged for the penalty, the same will not have execution against the executors of her defunct husband; because it is not thought reasonable that the husband's goods shall be evicted for the penalty of an injury done by his wife to himself.

Haddington, MS. v. 2. *No* 1872.

No 19. 1630. *February* 10. MUIR *against* MUIR.

A REVERSION by decreet of the LORDS extended against the heir, although the reversion bore no mention of heirs.

Fol. Dic. v. 2. *p.* 73. *Auchinleck, MS. p.* 207.

*** Durie reports this case :

No 19.

IN a redemption of lands, wherein the son was infeft by the father under reversion, the reversion bearing, 'whensoever the father should redeem from 'him,' not making mention of his heirs; the father, after decease of his son, redeeming from the apparent heir to his son, no party defender compearing, and the Clerk advising with the LORDS, if this reversion of this tenor should be effectual, to redeem from the apparant heir of the son; the LORDS found, That albeit the reversion made mention of a power to redeem from the son by the father, and bore not these words 'from the son's heirs and assignees,' yet that the father had power by the said reversion after the decease of the son, albeit there was no redemption used by the father, while the son lived, to redeem also thereby from his apparent heir, and that the reversion was not personal, so as it became extinguished by the son's decease.

Clerk, *Hay*.

Durie, p. 490.

1662. *February* 19. LORD CARNEGIE *against* LORD CRANBURN.

No 20.
A declarator of recognition may be pursued after the vassal's death.

THE Lord Carnegie being infeft in the barony of Dirleton, upon a gift of recognition by the King, pursues a recognition against the Lord Cranburn, because the late Earl of Dirleton, holding the said barony ward of the King, had, without the King's consent, alienated the same to Cranburn, and thereby the lands had recognized.—The defender *alleged*, *first*, No process, because he is minor, *et non tenetur placitare super hæreditate paterna*; *2dly*, The recognition is incurred by the ingratitude and delinquency of the vassal; yet *delicta morte extinguntar*; so that there being no other sentence nor litiscontestation against Dirleton in his own life, it is now extinct, which holds in all criminal and penal cases, except in treason only, by a special act of Parliament.

THE LORDS repelled both the defences, the first, in respect that the defender is not heir, but singular successor, and that there is no question of the validity of his predecessor's right in competition with any other right but the superior's; the other, because recognition falls not as a crime, but as a condition; implied in the nature of the right, that if the vassal alienate, the fee becomes void.

Fol. Dic. v. 2. *p.* 74. *Stair, v.* 1. *p.* 103.

1666. *July* 14. CRANSTON *against* WILKISON.

No 21.
Vitious intromission not sustained after the in-

BETWIXT Cranston and Wilkison it was found, That a person being convened as representing his father, who was alleged to be vitious intromitter to the pur-