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conceiving, that without expressing thereof by the general clause and *de novo damus*, with the special renunciation of ward, was a perfect security to the vassal, not only as to the property, which was of a far greater value and importance, but as to all proper casualities due to the superior, unless any of them were particularly reserved; for in law there being an enumeration of some particulars contained in a discharge, with a full and general clause subjoined, it comprehends all specialties which are *ejusdem naturæ* with those expressed, and is so constantly decided; whereas, by this interlocutor, a door was opened to question all charters of *de novo damus* not bearing expressly the renunciation of the marriage, which is scarce ever expressed but of late, and that in very few charters; so that the lieges were in *bona fide* to acquiesce in the common stile and opinion of all lawyers before this decision. As likewise that uncontroverted ground of law, that the marriage being *tractatum et agitatum* the time of the passing of the signature, in so far as the ward and marriage were both taxed (which was the chief ground of the interlocutor) and so by the general subsequent renunciation, the marriage was clearly taken away, unless it had been reserved; upon which ground, in the case of Blair against Blair, 3d July 1672, *voce* PROOF, the LORDS did lately sustain, that a general discharge did take away a special bond from an assignee; it being proved by witnesses, that it was *tractatum*, and communed upon, the time of the discharge.

Gosford, MS. No 508. *p.* 267.

1681. *February* 23. HAY *against* CREDITORS of Muirie.

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A *novodamus* was found to be virtually a confirmation of all anterior base rights, so as to preclude them from being conjoined with alienations made after the *novodamus* to infer recognition.

JOHN HAY of Muirie having obtained a gift of recognition from the King, of the lands of Muirie, pursues declarator thereon against the creditors and vassals of Muirie, who *alleged* no process, because there is nothing to instruct a recognition incurred, but extracts of sasines out of the register; and though the principal sasines were produced, they are but assertions of notaries, unless the warrants were produced. It was *answered*, That these sasines are sufficient *ad fundandam litem*, and have ever been so sustained; nor is the pursuer obliged to produce the warrants, but the defenders may have incident by horning against the havers of the warrants, if he found upon any quality therein in his favours. "THE LORDS found the sasines sufficient *ad fundandam litem*, but allowed the defenders diligence by horning against the havers of the warrants, without prejudice to insist in improbation of the sasines and warrants against the sub-vassals, to whom they are granted by the King's ward vassal." The defenders further *alleged*, That the recognition could not be incurred, unless the major part of the ward-fee were alienated by deeds consisting together at the

No 71. same time, but if some of them were purged by redemption, or resignations *ad remanentiam*, before the other subaltern rights were granted, the rights purged could be no part of the deeds inferring recognition; neither could infeftments for liferent, or for relief in warrandice, be taken, if the liferenter died, or the distress were purged before the subsequent deeds inferring recognition, although they were not then purged, yet they can incur no more as to the hazard of the distress or liferent, which the LORDS found relevant. The defenders further *alleged*, That the subaltern rights granted by the authors of the ward vassal, could not come in with the last ward vassal's deeds of recognition, because the King, having received a singular successor, his vassal doth thereby consent to his right, and cannot quarrel it upon anterior deeds by his author. It was *answered*, that the King grants infeftments upon confirmations or resignation of course, and his officers neither know nor consider, whether there be subaltern rights granted which may inchoat or compleat recognition.

THE LORDS found, That subaltern rights granted by the ward vassal that now is, or by his predecessors and authors, did concur to infer recognition, so soon as they exceeded the worth of the half of the fee, unless there intervened a *novodamus*, which would purge anterior deeds of recognition, whether inchoat or compleat. *See* RECOGNITION.

Fol. Dic. v. 1. *p.* 437. *Stair, v.* 2. *p.* 865.

*** See No 61. p. 6470. and No 67. p. 6500.

*** The like was decided, Lord Advocate against Creditors of Cromarty, 23d February 1683, No 60. p. 6467.

1686. *December* 16. MAXWELL *against* FALCONER.

No 72.

THE case of Maxwell and Falconer was reported, where the LORDS found a *novodamus* discharged all preceding feu duties.

Fol. Dic. v. 1. *p.* 437. *Fountainhall, v.* 1. *p.* 433.