was apparent heir, and the deeds flowing from him were not sufficient *per se*, because he was the King's vassal. This was formerly decided in 1674, Lord Lyon against Forbes of Auchintoul, No 13. p. 13387. No 16.

Fol. Dic. v. 2. p. 315. Fountainhall, MS.

1681. *January* 26. EDIE *against* THOIRS.

No 17.

THE smaller servitudes are sufficiently constituted by prescription, so as to be effectual against the superior, to whom the lands return by recognition.

Fol. Dic. v. 2. p. 216. Stair.

*** This case is No 76. p. 6518., *voce* IMPLIED DISCHARGE & RENUNCIATION.

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

No 18.

RECOGNITION is not incurred, unless the major part of the ward-fee be alienated by deeds consisting together at the same time.

1681. *July* 7.—AN infeftment for relief of cautionry, being only conditional in case of distress, was found not to be like an infeftment of annualrent for a pure debt, to be computed as an alienation for the full sum in the bond, unless distress had followed; and the cautioners having paid the sum, and taken assignation, without distress, made no difference; but it was found, that it might be conjoined as a conditional distress by hazard; so that, for instance, if the half of the fee should be alienated, such an infeftment for relief might be computed at some certain value to infer an alienation of the major part; for the Lords thought, that even a wadset, though of the whole barony, if there was a backtack for payment of the annualrents, would not infer recognition, unless the sum exceeded the value of half of the barony.

1683. *March* 15.—BUT infeftment for relief, bearing, that the cautioner was distressed, and therefore disponing for his relief, declaring his entry to be at a certain term, and that he should apply his intromissions towards payment of the debt; was a sufficient ground of recognition *quoad valorem* of the sum.

DISCONTIGUOUS lands were all contained in one charter, bearing one reddendo. It was *pleaded*, That the major part of the whole must be alienated to infer recognition of any part. *Answered*, Lands are united, either naturally, when contiguous, or civilly, when discontiguous. Lands are united by a formal clause of union into one barony or tenement, and the charter in question con-

No 18. taining no formal union, but only a dispensation, to take off the necessity of several sasines in the discontiguous parts, recognition is to be inferred from a disposition of the major part of each of these contiguous parcels. THE LORDS found, that the dispensation for taking sasine at one place, and the reddendo of one duty in the charter of resignation, do not import a civil union of the discontiguous tenements, which therefore are to be considered as *distincta tenementa*, so as alienation of the major part of each does recognosce that tenement only.

Fol. Dic. v. 2. *p.* 313. 314. *Stair. Harcarse. Sir P. Home. P. Falconer.*

*** The reports of this case are No 61. p. 6470. No 67. p. 6500, and No 71. p. 6513., *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1682. *January.* EARL AIRLY *against* STRACHAN.

No 19. ONE Strachan having disponed to his eldest son John the fee of his estate, to be holden base of the disponer, John wadset the half to John Watt, who made requisition, and charged the granter of the wadset's daughters, his heirs; and upon their renunciation, apprised from them as lawfully charged to enter heir to their father, and obtained a charter from the King upon the apprising; and thereafter disponed the lands, without consent of the superior, to Stuart. My Lord Airly got a gift of recognition; against which it was *alleged* for the daughters of John, who were now served heir to their grandfather; That no recognition of the defender's lands could be incurred by John Watt's disposition to Stuart; because, 1*mo*, The ground of the apprising was but 1200 merks, which is not the half of the worth of the lands; 2*do*, The charter from the King is from the wrong superior; for the apprising is led against the defenders as charged to enter heir to their father only, who was never the King's vassal, but held base of the grandfather.

"THE LORDS assoilzied from the recognition;" and the donatar did not insist for the 1200 merks belonging to Watt.

Harcarse, (RECOGNITION.) *No* 822. *p.* 229.

1682. *March.* LAIRD of DUN *against* KEITH of JACKSTON.

No 20. IN a declarator of recognition, it was *alleged* for the defender, That the lands disponed in wadset were partly ward, partly blench, and partly feu, and so the ward can be considered *pro rata* only with the other lands; which the Lords sustained; just as if there had been two ward-tenements for a sum, which compared to one would be the major part, but would not be the major