

RECOGNITION.

13395

not prescribed, to make the lands recognosce; the LORDS found, that, notwithstanding the prescription, they might concur, the last ground being within 40 years; for they found, that the debt might be extinct as to the effect of execution, and yet not as to the casualty of recognition, for *contra non valentem agere non currit præscriptio*; but so it is, that the feudal delinquency of recognition is not incurred till the major part of the barony be alienated by base infeftments. Now, supposing the last base infeftment to be within 40 years, and every one of the grounds and steps, which make up the recognition, being supposed to be within 40 years of each other, the action could not exist till the half, and a little more, were alienated, and so could not begin to prescribe till then, since *actioni nondum nata non præscribitur*.

No 24.

A similar decision is reported by Forbes, 25th July 1712, Moncrieff against Heirs of Ballo, No 168. p. 10932, *voce* PRESCRIPTION.

THE LORDS sustained all base infeftments after the 12th of April 1654. (the date of the Usurper's ordinance about ward-lands) as lawful, and not to be the ground of recognition, unless the vassal continued after the King's restoration without demanding confirmation.

Fol. Dic. v. 2. p. 314. 315. Harcarse.

*** This case is No 63. p. 6485., *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1687. June. KER of Littledean *against* LAW.

IN a declarator of recognition of ward-lands, which were wadset with a back-tack, for a sum under half the value; *alleged* for the defender, That till the back-tack be declared void, and brought to the case of a proper wadset, the back-tack duty only is to be considered as the burden. *Answered*, It is the vassal's contempt in disposing the whole lands, and not the value of the back-tack duty that infers recognition. THE LORDS repelled the defence.

No 25.

Fol. Dic. v. 2. p. 314. Harcarse.

*** This case is No 40. p. 6437., *voce* IMPLIED DISCHARGE & RENUNCIATION.

1725. January 13.

Sir JAMES HALL of Dunglas, *against* JOHN CRAW Writer in Greenlaw.

MARGRAET TAIT succeeded her brother James, by a precept of *clare constat* from the superior, in a ward-fee, which she disposed in her contract of marriage to James Craw her husband, his heirs and assignees whatsoever, heri-

No 26.

Where a wife, in her contract of mar-