

ting to him of a suitable Aliment, must be made up by the Superior.
If the Heir's other Lands be life-tenanted, his Aliment is to be modified out
of these and the Ward Lands proportionably: Upon which Account the life-
-renter must be cited in the Process of Aliment Stair Lib. 2. Tit. 4. §. 36. Ver.
The Benefit of Ward Lib. 3. Tit. 5. §. 3. pr. Lib. 4. Tit. 22. §. 11. Ver. The
Second Exception. Where the Heir holds Ward Lands of several Superiors,
the eldest Superior only who gets the wail of his Marriage, is liable for
his Aliment Stair Lib. 2. Tit. 4. §. 49.

Sec. 2.

Of Recognition properly so called.

Special Recognition, or Recognition specially so called, is a Casuality
that occasions a Ward Fee whether simple or taxt, to return to the Superior by
the Vassal's disposing it, or the major Part thereof, redeemably or irredeem-
-ably, without his Consent. This is a legal Irritancy in the Nature of Ward
Fees tho' not expressed. Whither it doth arise from the personal Obligation of
Fidelity Gratitude and Service owing by the Vassal to the Superior for his
Lands presumed to flow gratuitously from the Superior, or because of the
Superior's peculiar Abuse of a Person and his Issue for Vassals, which
ought not to be bailed by the Vassal's withdrawing himself from his Fidelity
and obtruding a Stranger upon the Superior without his Consent; or from his
being thereby less capable to serve his Superior, or upon all these Accounts
more particularly set forth by Craig (Fid. Lib. 3. Tit. 3. §. 4.) I shall not deter-
-mine.

It is much disputed what Kind of Alienation it is that causes Recognition.
A simple Disposition without Infeftment doth not found Recognition: because
that being an incomplete Right dwells not the Vassal, but is only a personal
Obligation upon him to devolve. Nor is it incurred by Infeftment taken from
the Superior upon Resignation: because his Consent is inferred from his Ac-
-ceptance of the Resignation. Infeftment taken upon a Deathbed Disposition
to the Prejudice of the Heir and reduced by him doth not found Recognition.
Which the Quarter of Deathbed is competent by Exception against Recognition
as not being a possessory, but a declaratory or petitory Judgement. But Recognition
is incurred by taking Seisin when the Disposer was on Deathbed; the Dis-
-position containing a Precept of Seisin being delivered in liege posture
simply, without Reservation not to take Seisin thereon base 20 July 1669
Barclay contra Barclay Stair Lib. 2. Tit. 11. §. 12. Recognition is not incurred
by Alienation to the Vassal's apparent Heir in the right Line who is aliquot
successorius in the ordinary Course of Law, as to the Disposer's eldest Son &c.
Craig Fid. §. 9. Ver. Nec autem prohibitio Stair Lib. 2. Tit. 3. §. 32. Ver. 3.
This

This Privilege, Tit. 11. §. 18. Because that is only proceptio hereditatis,
whereby the Superior doth not change his Vassal, but the Fee remains in the
Vassal's Family in the same Way as it would have done by Succession. Nor is
Recognition incurred by an Alienation of Tithes which are not Fundus but
onus Fundi inherens, or by an Infeftment essentially null, as wanting the pro-
-per Symbols of Delivery, or bearing Delivery not by the Superior or his Bailie,
or not to the Vassal or his Procurator, or not upon the ground of the Ward
Craig Fid. §. 9. Stair Fid. Tit. 11. §. 11. Tho' an apparent Heir of Ward Lands
dispose and an Infeftment follow, no Recognition is incurred: The Infeft-
-ment being null as a non habentis potestatis et quod nudum est nullum
solutur effectum. But upon the apparent Heir's entering after Infeftment,
and the Disposition's becoming thereby effectual, the Lands would fall in
Recognition to the Superior: whose accepting the Disposer for his Vassal,
would not be thought a dispensing with the Casuality of Recognition, but
rather that he intended thereby to make his Recognition take Effect. Stewart
answers to Dunt Double St. Recognition.

The Feudists dispute very much this Point, whether Recognition is in-
-curred by Subfeudation. They assert on the one Side, that this should be re-
-garded as Recognition: For that neither the Superior nor Vassal is thereby re-
-leased, and continues liable to all personal Devotions as before; nor the Super-
-ior's Right and Interest in the Fee diminished. They urge a contra on the
-other, that Subfeudation is counted Alienation and that is prohibited crava
-fid. §. 8. Which Opinions are that reconcilable. Subfeudation for a considerable
-Fee Duty competent to entertain the Vassal, being properly no Alienation but
-yet a perpetual Location doth not work Recognition. But the granting a sub-
-feud Ward, Blench, or in Mortification, or under the Name of Imphyteus for
-an exorbitant and disproportionate Fee Duty, within the Hall of the true Value
-of the Profit of the Fee, operates Recognition Stair Fid. §. 13 & 14. For viewing
-what obtains by our Constitution, it is to be noticed, that from the Year 1487
-not only the King and his immediate Ward Vassals, but also Vassals holding
-that Lands Ward of Subjects might, without the Superior's Consent or Confirmation,
-have seized their Ward Lands redeemably or irredeemably to a competent Lord:
-that is, for the Redoubted Duty in Lands holden of the King, or Lands of his Ma-
-jesty's Property, and for the full Rental in Church Lands which Feud excluded
-the Ward, Liferent Echeat Recognition and Forfeiture of the grantors. Act 71.
-Par. 19. J. 2. junct. Act 91. Par. 6. J. 4. Act. 6. Par. 9. J. 6. 12. Feb. 1674 & 23
-January 1680 M. Huntly contra L. Cairnborro. 24 June 1680 Stewart of Tor-
-rance contra Feuars of Ernoch 16. Novemb. 1680 Campbell contra L. Sutherland
-Brech & Enrygile Stair Lib. 2. Tit. 3. §. 32. M. Kenzie Heir. on Act 71. Par. 19.
-J. 2. Because Vassals being thus freed from labouring their own Lands,
-might be able to serve the King in his Wars; and the Lands might be better
-cultivated by such Feuars, who could attend that Business with more Application
-and Sedulity. In the Year 1606 this Privilege of feuing out Lands inconfello superi
-or