=re, was restricted to the King's Vassals Act 12. Par. 18. J. 6. In the year
1625 Bishops and Members of their Chaplers were allowed to feu their Ward
Lands for a Duty equivalent to the reloured Duty to be doubled at the Entry
of Heirs Act 9. Par. 23. J. 6. But not to tax Heir Ward Lands for a certain
Duty, Because Feuing did afford a more constant Rent to the Church than
the Casualty of Ward that seldom fell; and when it did fall, was gifted and dis-
poned by Gifters for the Time to their own private Use, without any Benefit
to their Successors. But taxing of Ward Lands was thought contrary to the In-
terest of the Church, and a Precedent for them to dispose of their Casualties
before they fell. Bishops enjoyed this Privilege of feuing three Years only. In
the Year 1633 Vassals of the King and Prince were also incapacitated to
feu the Ward Lands without the Superior's Consent Act 16 Par. J. Ch. I.
And so the Allowance to Feu given by Law, was first restrained and then
discharged. Therefore now as Feus of Ward Lands held of any Superior do not
without his Consent exclude Ward and other Casualties of Superiority, ex-
cept Feus granted when Feuing was allowed by Law: So our Custom
gives into the Feudal Law, as to other subaltern Infeftments of
the whole Ward Fee holden Blench, or in Mortification, or under the Name of
Emphyteusis for an elusory or inconsiderable Duty, accounting Recognition
incurred thereby. But Subaltern Infeftments of less than the major Part
of the Ward Fee do not with us infer Recognition, even tho' these Infeftments
be Blench or Mortification: A Vassal being indulged a free Disposal of the
Half of his Fee for his own Convenience and Necessity; and supposed still in
a Condition to serve the Superior while he retains the equal Half. Nor should
a subaltern Infeftment of the whole Ward Fee for a Feu Duty equivalent to
the Half of the true Rent, wherein the major Part is not in Effect alienated,
be sustained as a sufficient Ground of Recognition: Especially now when Feus
are generally granted for onerous Causes Craig Feud. Lib. 3. Tit. 3. §. 6. Stair
Lib. 2. Tit. 3. §. 14. So that Sir George M'Kenzie (Inst. Lib. 2. Tit. 5. §. 5. is
mistaken when he asserts that if the Vassal dispone the Half of his Ward
Lands without the Superior's Consent, the whole falls to the Superior and there-
fore the late Publishers of his Book have for the Half put in the larger Half.
As the Vassal may alienate the Half of his Fee: So he may grant any
other Right less than the Value of the Half as an Infeftment of Warran-
dice Had. Pratt. 6 March 1631 & 23 Feb. 1623 Lathcart contra Campbel
Nor can any Infeftment of Warrandice tho for more than the Half
be a Ground of Recognition, untill the Warrandice take Effect by Distress
Stewart Answers to Dirlet Double Fit. Recognition, unless the Right of
the principal Lands be manifestly defective Stair Ibid. §. 17. In strict
Law, any Alienation tho for a small Sum under Reversion or in Liferent,

should make the Lands recognosce, if the Vassal do make over his Pos-
=sion: For that being out of Possession he renders himself incapable to
serve his Superior. And a Wadset albeit affected with a Back-Tack in Fa-
vour of the Granter, by which he remained in Possession of more than the half Free
Profits deducted of the Lands over and above the Back-tack Duty, was sus-
=tained as a Ground of Recognition: Not only because the Wadset was a
total Alienation of the Property, but also for that neither by the feudal
Law, nor by Acts of Parliament it was ever allowed to grant such Wadsets.
For K. J. Second's Act of Parliament allowed only the granting of Sub-
=feus not below the reloured Duty, which was repeated by the Act 1606
as to Ward Vassals holding of Subjects, and by the Act 1633 as to Vassals
holding of the King; both which Acts declare all Alienations without
Consent of the Superior to be grounds of Recognition 29 June 1687 Ker of
Littlen contra Law. The Alienation remains notwithstanding the Back-
=tack, whereby the Granter of the Wadset returned not to be Vassal to his
Superior: Nor did the Wadsetter become Vassal till he were confirmed, so
that the Superior medio tempore wanted a Vassal to serve him by whom
he might have the Casualties of Liferent Escheat &c. Again as the Vassal could not
purge his Recognition by taking a Tack neither could he by taking a Back-
=tack, which is but a Kind of Tack and do not state him in the Right of the
Fee: Nor is it a real Right quoad the Superior, the Tacks be real quoad
singular Successors. So that I want Sir James Stewart's Voucher when
(Ibid.) he says that de praxi, the granting a Liferent Infeftment of the
whole Lands not valuable above the Half, is a Wadset of the whole for a
Sum far below the Value of the Half, with a Backtack for the Annualrent
of that Sum, is no Ground of Recognition: Seeing the Backtack reponed
the Granter of the Wadset to the better Half of his Rents, and if he were
Year and Day at the Horn his Liferent of the whole Property would fall
to the Superior, with the Burden of the Backtack Duty, but if the Dispo-
=ner should afterward discharge the Backtack and the Reversion, that would
be a new Alienation and a clear Ground of Recognition. If a Wadsetter of
Ward Lands dispone the same before Redemption without the Superior's Con-
=sent, the Lands do not recognosce simply, but only the Wadsetter's Right,
and the Reversion, whither incorporated in the Wadset or only registred, will
still remain with the Granter of the Wadset, Stewart Ibid. Fit. Wadset here-
=table and movable. Again, Recognition is not incurred by granting base
Infeftments within Half of the Value of the Ward Fee tho the Vassal by gran-
=ting a posterior publick Infeftment did not retain the major Part 21 March
1707 L. Grant contra Creditors of Halgreen the last being the Superior's

own