

the Ward Vassal having obtained a new Investment with a Novodamus on base Investments anterior to the Novodamus cannot enter in compute with subsequent base Investments, to make up a Ground of Recognition 23 Feb. 1683 Kings Advocate contra Creditors of Cromarty. And a Gift of Recognition being granted to one who had a base Investment, the Donator's base Investment is no Ground of Recognition to make up the major Part. Because it was the Donator's Fault, that he did not apply for a Confirmation of his Right 2 Feb. 1683 Buchan contra Forbes. Recognition of Lands appraised or appraised is incurred during the Legal by Decree of the Receiver 15 July 1707 Creditors of Dingwall contra Gordon of Carnoustie. Because the Receiver during the Legal is Proprietor Lands holden tax Ward fall in Recognition as well as other Lands 5 Feb. 1683 Lady Carnegie contra Cranburn. McKenzie Inst Lib. 2. Tit. 5. §. 2. The Taxing being only a Liquidation of the Casualties and no Change of the Nature of the Fee. Besides, the Vassal is chargeable with the more Ingratitude for withdrawing himself from the Superior's Vigilance, after he had abated the Rigour of his Ward by taxing it at an easy Rate. Which cannot be improved to abridge him of other Casualties; on the contrary exceptio firmat regulam in non exceptis

Seeing it is the Want of the Superior's Consent to the Alienation made by Ward Vassals, that imports Recognition, I shall here examine, what Kind of Consent is sufficient to prevent and take it off. This Consent may either precede concur with or follow the Vassal's Deed. As to antecedent Consent, Craig (Inst Lib. 3. tit. 1. §. 11) gives in to the Opinion of the Feudists, that the granting a Fee to the Vassal his Heirs and Assignys whatsoever, imports the Superior's Consent to him to alienate & assign to whom he pleaseth. But yet a Disposition to Heirs and Assignys was found to imply only a Power to assign the Disposition before Investment taken thereon 5 Feb. 1683 Lady Carnegie contra Le Cranburn. Services of Watergangs and Fensel reserved in a Charter of Confirmation by the King, tho' not secured by Prescription, would not be excluded by Recognition of the Lands afterwards incurred. But Recognition was found to exclude such Services reserved in a Charter of Resignation by the King, seeing Reservations and Charters of Resignation pass of course, and are never considered by the King's Officers, whose Negligence cannot wrong his Majesty 26 January 1681 Dickson contra Thoms and Dun. A Superior's Obligation to receive and invest his Vassal upon a Precept of clare constat, and to grant Confirmations in Favour of particular Creditors of the Vassal therein mentioned, of any Wadsets they should obtain from the Vassal of their Sums expressed, was found not to empower the Vassal to grant a Wadset to another Person who had advanced Money to the Vassal to pay off one of these Creditors to whom the Wadset might

might have been granted, as come in his Place per surrogationem. 29 June 1667 Rex of Littledean contra Law. For the Superior's Consent was limitata causa which produced limitatum effectum: And Fidelitas per se being considered in the receiving of Vassals, it was not lawful to impose upon the Superior any other Vassal than whom he consented to, non fit extensis de persona in personam ubi de communi consensu agitur, and the Superior consenting in Favour of particular Persons named, imports an Exclusion of all others. As to concurrent Consent it would seem that a Superior subscribing Witness to his Vassal's Disposition of Ward Lands, did not import such a Consent as did authorize and bind or Recognition.

Subsequent Consent to the Alienation may be either express or tacit. The Superior's express Consent is by a Charter of Resignation or Confirmation or Precept of clare constat. After Saisin taken upon a Charter of Resignation, no posterior base Right can concur with anterior base Investments to make Recognition to the Prejudice of the Obligor of the Charter 15 March 1683 Kay contra L. Pourie and Dinkhaven. But Investment of Resignation after Recognition is incurred tho' not gifted, doth not secure itself 20 March 1683 inter eosdem. And yet a Confirmation of a base Investment after Resignation of the major Part, doth secure itself, altho' it is counted to make the rest fall in Recognition 23 Feb. 1683 Kings Advocate contra Creditors of Cromarty. The Reason of the Difference here betwixt Resignation and Confirmation, is because the Superior grants a Charter upon Resignation of course, without considering the Casualty of Recognition: Whereas in the case of a Confirmation, he behoves to have that Casualty in View, seeing he confirmed the Right granted ab initio without his Consent. A Charter of Confirmation granted by the King doth without a Novodamus, hinder the Right confirmed to fall under Recognition thereby, or by any other posterior Deed of the Grantor: But doth not import a passing from any Objection against the Right confirmed, upon the Account of Recognition incurred by other Investments anterior to that Right and the Confirmation 6 Feb. 1673 L. Halton contra E. Weems. Because Confirmation imports only a receiving the Vassal in such a Right as his Author had; and Recognition fallen by former Alienations, is not presumed to have been considered by the King and his Officers in Eschequer. But the granting a new Investment with a Novodamus to a Ward Vassal, doth not only hinder anterior base Investments to be reckoned with subsequent Investments of that Nature to make up a Ground of Recognition 23 Feb. 1683 Kings Advocate contra Creditors of Cromarty. But also takes off Recognition incurred before the Novodamus Inst Lib. 2. Tit. 3.