

3. §. 15. Again, a Precept granted by a Donatory of Recognition to a Vassal whose Lands had fallen in Recognition, acknowledging his own and his Predecessor's Right in the ordinary Terms of a Precept of clare constat, was found to exclude the Donatory and all deriving Right from him thereafter. 24 June 1660 Gray contra Howison and Gray. But the Superior's Consent is not inference by granting Charities in Obedience to a Charge upon Appropriation or Appropriation, tho' before the Donatory's Possession. *Stair* §. 23. Seeing such a necessary and involuntary Act, could not be construed any Acknowledgment of the Vassal's Right. Craig (*Feud. Lib. 3. Tit. 9. §. 12.* ~~in fin.~~) is of Opinion, that the Superior's Consent to alienate the whole Fee, will not save the Vassal from Recognition by alienating only the major Part.

The Superior's tacit Consent called Homologation, to the Alienation of a Ward Fee, is inferred by requiring the new or Subvassal to perform Services due out of the Fee, or pursuing him to pay any Casualty of Superior. *Stair* §. 24. or by Prescription. Prescription upon 40 Years uninterrupted Possession of Ward Lands by the Heir, after the major Part had been alienated without the Superior's Consent, is relevant to bar Recognition. The Prescription by safe Possessions of Annualrent, after the Death of the Vassal who granted the same, is reckoned equivalent to the grantor's own Possession, in Order to make up the Years of Prescription, for lacking of the Recognition. But posterior Deeds of Alienation within the Prescription, are allowed to be compared with the Deeds of Alienation before the Commencement of Prescription to infer Recognition quoad excessum, with the Burden of these anterior Deeds 25 July 1712 Monies contra Heirs and Creditors of Balls. Recognition incurred by a Vassal's granting a Wadset of his Wardlands, was found purged and taken off by the Superior's acquiring Right to that Wadset from the Wadsetter, which was an Homologation of the Wadset, importing his Consent to and Approbation of it 29 June 1687 *Ros of Littledean* contra Law. Recognition is not extinguished by Death of the Vassal who committed it, before Sentence or Litiscontestatio against him, but may be pursued against his Successor 19 Feb. 1662 L. Carney contra L. Cranburn. Because Recognition is not such a Crime as morte extinguitur, but a Condition implied in the Nature of the Right, that upon the Vassal's Alienation without Consent of the Superior his Fee becomes void.

Recognition being incurred, and Nothing to hinder its taking Effect, the Fee opens and returns to the Superior without the Burden of any Debt or Deeds of the Vassal, except those formerly established by Consent of the Superior

rior, or by Authority of Law as Appropriation, Judications, Feu Farms &c. In former Times Recognition was not excluded or burdened by Inhibition served against the Ward Vassal before Alienation inferring Recognition 16 Decemb. 1600 Gray contra Lady Ballegern & L. Balhaird. But now Inhibitions stand good against Recognition arising from posterior Deeds. *Act 15. Sept. 2. 1707. §. 7.* Because 1. Recognition being rigorous and odious, tho' it was far extended when Ward Holdings were gratuitous and given for more Fidelity and personal Service to the Superior, ought to be favourably & moderately sustained now when Ward Fees are commonly granted for onerous causes, without any such personal Services. 2. Recognition upon Inhibition, a Remedy introduced by Statute, excludes the Right inferring Recognition, as done, approved to mandats of the King's publick Letters prohibiting the Inhibitors Debtors to grant any Possession prejudicial to his Debt. And if it were otherwise, it would be easy for Ward Vassals who have much Debt to shun the Payment thereof, by doing a Deed inferring Recognition with a Prospect to make an easy Composition with the Superior, to a legal Diligence used ever bona fide for onerous causes against a Ward Vassal's Estate, if not a Deed inferring Recognition, tho' before Declarator, falls in Consistency with the Vassal's Right. Recognition excludes all Tacks set without the Superior's Consent whether prior or posterior to the Recognition, unless such Tacks be profitable to all Parties interested, Tacks being made real Rights by Law against Purchasers only, and not against Superiors. *Stair* §. 25. Recognition doth also cut off Services constituted upon the Fee by the Vassal inconfessio Superioris, as Thirlage &c. But not Services established by Prescription, to which all Parties having Interest are presumed to have consented; and which the Superior might have interrupted for his Interest, tho' the Vassal was chiefly concerned to notice the same 26 January 1601 *Edie* contra Thorns and Dun *Stair* §. 26.

The Superior cannot immediately after Recognition it incurred possess himself of the Fee, or pursue any possessory Judgment until the Recognition be declared. *Stair* Lib. 4. Tit. 14. §. 1. either at the Instance of himself, or of his Donatory who, in Lieu of a Gift, gets a Disposition and Charter expressing the special Cause of Recognition, and thereby becomes Vassal to the Superior in Place of his former Vassal, according to the Tenor of the Charter. It were proper that such Charter contain a Clause not to take Possession before Declarator. Seeing it may be granted without a just Cause; and the Donatory is in no Hazard of being prevented by another, if he timely and diligently prosecute the Declarator.

The Tenor of a Declarator of Recognition at the Instance of a Donatory runs thus. Our Will is, and we charge you, that ye lawfully summon B. as having been Vassal to C. in the Lands of D. at least apparent Heir there-
-in