

= in, who or his Predecessors or Authors have committed the Deeds of Recon-
 = mition underwritten to compare &c to answer at the Instance of D. as having Rig-
 = c by Charter from the said C. Superior of the said Lands and others foreaid fallen
 = c in his Hands by Recognition for the causes specially contained in the forsa-
 = c Charter viz. &c. Which Charter is dated &c. That is to say, the said Defender
 = c to see ~~and~~ ^{hear &} verified and proven ^{that} therethro' he has committed and lost the
 = c Right and Property of the said Lands and others foreaid, and the same is re-
 = c cognized to the said Superior of the same, and that from and after the commit-
 = c ting of the said Deeds of Recognition; and that the said Pursuer by Virtue of
 = c the forsaide Charter hath good Right to have Infeftment thereof, and to bruike
 = c and puse the said Lands and others foreaid by Virtue of the said Charter and
 = c Infeftment to follow thereupon, as his own proper Heritage in all Time coming,
 = c and to intromet with claim and pursue for the Rent and Burgh of the same
 = c Since the said Deeds of Recognition, against all Possessors and Intrometters
 = c therewith conform to the Laws and daily Practick of this our Realme, accor-
 = c ding to justice &c. This Declarator must have two Dicts, unless the Vassal be
 = c Infeftment be produced *Stair Fld. §. 5.* Because Recognition generally conveys
 = c all Rights flowing only from the Vassal; all Parties having Interest may
 = c compare and defend: But no Person need to be called save the Vassal, upon
 = c the avoiding of whose Right all ~~subsequent~~ subaltern Interests fall in con-
 = c sequence *Stair Lib. 2. Tit. V. §. 27.* Any Superior's Grant is a good active Title to
 = c pursue without instructing his Right, ~~unless~~ unless he be disclaimed or the Vassal
 = c be a singular Successor. For the King's Gift is absolutely sufficient per se. Because
 = c none can disclaim his Majesty, who is presumed to be Superior, till another Super-
 = c ior appear *Stair Fld. §. 28.* Process was sustained at the Instance of a Donatary
 = c by not infeft upon his Gift, the Action being a Declarator that the Vassal
 = c has lost his Right to the Land, and not that the Donatary hath Right
 = c 28 January 1605 L. Dun contra Scot. Such a Declarator may even after
 = c the Death of the Vassal who committed Recognition, be pursued against
 = c his Heir, who the he be Minor cannot claim the Privilege, that non tene-
 = c tur placitare de hereditate paterna &c. die inter eosdem 19 Feb. 1662 L. Con-
 = c nequy contra L. Cramburn. Nor was this dilatory Plea sustained, that the
 = c Defender's Author bound to him in Warrandice was not called 28 January
 = c 1605 L. Dun contra Scot. For the Defender ought to intimate the Process,
 = c to his Author if he would have him in the Field. Terms will be allowed
 = c to the Pursuer for proving Alienation of the major Part of the Fee, and
 = c mercedent Diligence against Recovery of the Infeftment whereby recogni-
 = c tion is incurred, for producing the same ad modum probatissim; they
 = c not being the Pursuer's Title, but only his *media conclusio* 17 Feb. 1671
 = c Gordon

Gordon contra McIlloch of Ardual. Alienation of the major Part of the
 Fee hath been sustained to be instructed by Extracts of Infeftment granted by the
 Ward Vassal, without obliging the Pursuer to prove the principal Infeftment, or
 the Warrant thereof, unless he have the same. But the Defender is relieved
 if he requires it. Diligence by flowing against the Heirs of the
 principal Warrant, for Production thereof or may insist to prove them a-
 gainst the Subvassals 26 January 1608 *Stair contra Stair* and *L. Dun*
 23 Feb. 1605 *Stair contra Infeftment of the same*. But the Recognition
 is ordinarily declared via actionis, yet a Declarator of Recognition being
 insisted upon the Gift, one having obtained a Decree of Remission against
 the Donatary of the Land recognized was found to have sufficient Interest
 with the preceding Declarator to pursue Action of succeeding in the
 Vice against one who had entered to the Possession of the Person deceased
 to remove 25 March 1623 L. *Stair contra Stair* and *Stair*

§. 27. In a Competition of Donataries in School, the whole Gift
 is first awarded, is preferable, yet a Declarator of Recognition first in School,
 is awarded to a second Donatary obtaining the first Declarator, howbeit
 Answers to Doret Doret *Stair*. Recognition. The Reason of the Difference is
 because Infeftment upon a Gift of Recognition fully awards the Superior's Warrant
 a Gift of School requiring no Infeftment, becomes a complete Right and
 Declarator.

A Person returning to the Superior by Recognition is relieved of his Heritage, and
 not Conquest in his Person: *Conquestus enim proprius et in viciis est et novo titulo*
oneroso, et clam cum latius accipitur est ex nova causa: quod Recognition: que
fundatur in jure domini Superioris non convincit, Stair Fld. Tit. de Successione in
Feudo amisso.

Sec. 3.

The Casualty of Marriage of the Heir of Ward Vassals.

Marriage is a Casualty on the Heir of a Ward Vassal unmarried at his
 Predecessor's Death to the Superior. In old Time if a Ward Vassal died leaving his
 Heir whether Minor or Major unmarried, the Superior had Right to the Value of
 the Forcher the Heir got or might have got with a Wife; whether he the Superior
 offered him a Match or not, which is called the single Avail of the Marriage.
 And was intitled to the Double of such a Forcher, if the Heir, notwithstanding
 of a suitable Wife offered to him by the Superior, did marry another, called the double
 Avail of the Marriage *Craig Feud Lib. 2. Tit. 2. §. 6.* But now Custom hath
 without Respect to the Forcher, determined the single Avail of Marriage to be
 two Years Rent of the Vassal's free Estate, all Debts and Burdens deducted,
 and the double Avail to be three Years Rent 24 Feb. 1675 *King's Cause*
 contra