

No 14. because not recorded in the books of the shire, or general register, but in the Town-clerk's books, which are only a proper register of sasines, given to be holden burgage upon resignation in the Bailie's hands, as representing the community.

Answered for Bessey Bennet, The act of Parliament, in King James VI.'s time, dischargeth private infestments to be given by any other than the Bailies and Clerks of the burgh, as being a casualty due to them; who cannot complain for being deprived thereof, when they voluntarily give sasine upon the granter's precept. The decision, 15th December, 1629, relating only to the tinsel of superiority, hath no contingency with the point. *2do*, It is ridiculous to assert, that any infestment within burgh, whether base or not, should be registered in the shire, and not in the town books. *3tio*, Whatever might be pretended for transmitting the property of burgage tenements by public resignation, nothing could hinder a servitude upon these to pass by a base infestment; especially considering that this is only a temporary right of liferent provision, and the precept of sasine was executed by the Bailie and the Clerk, and recorded in the town Court books, in the terms of the act of Parliament.

THE LORDS sustained the infestment in favour of Bessey Bennet.

Fol. Dic. v. 1. p. 470. Forbes, p. 517.

1740. July 3.

MARQUIS OF TWEEDDALE *against* The TOWN of MUSSELBURGH.

No 15.

It was laid down, as a proposition certain in law, though there was no occasion to give a direct judgment upon it, that an original charter, erecting a burgh, requires no sasine, because there is no person in being at the time who can receive it.

Fol. Dic. v. 3. p. 317. Kilkerran, (SASINE.) No. 1. p. 503.

SECT. IV.

Method of obtaining Infestment by an Heir.

No 16.

HOME of Renton *against* JOHN STUART.

A SUPERIOR being charged to enter one to his predecessor's lands; if he, after the charge, denude himself, the letters, notwithstanding, will be found orderly

proceeded, because he was *in pessima fide* to denude himself after the charge.
Fol. Dic. v. I. p. 471. Spottiswood, (SUPERIORS.) p. 322.

No 16.

1581. *May.*ORME *against* ORME.

THERE was a gentlewoman called Orme, spouse to one Adamson in Perth, and daughter to the Laird of M. ; who being retoured and served heir to her brother, the young Laird of M. in certain lands that he held of his father, as immediate superior to him of the same, charged her father to give her state and sasine according to her service, as nearest heir to her brother, who refused the same. She meaned herself to the Lords of Session upon her father's refusal ; obtained letters and charges to charge the Abbot of L. as immediate superior of the said lands to her father, and of whom he held the said lands *in capite*, to give her state and sasine of the same. The Abbot meaned him to the Lords of Session, and obtained suspension, *alleging* that her brother held no lands of him as immediate superior of the same ; and also that the order was not good, in directing charges against him by the Lords of Session ; but that the common order ought to have been observed, which is, that when any superior refuses to enter another, the complainer has recourse to the nearest immediate superior, and that by the order of the Chancery, and precepts direct furth of the same. The whilk allegiance the LORDS found relevant, and ordained the said woman to have direct recourse to the Chancery, and raise precepts there conform to the common order.

Fol. Dic. v. I. p. 470. Colvil, MS. p. 301.

1624. *July 27.*L. CAPRINGTON *against* L. KEIR.

L. CAPRINGTON pursues the L. of Keir to receive him as heir retoured to his father, in some lands holden of the L. of Foulshiells, which Foulshiells held the same of the L. of Keir ; and because Foulshiells, who was Caprington's immediate superior, being charged by Caprington to enter to the superiority within 40 days, conform to the 57th act, Parliament 7th, James III. with certification ; therefore he hath recourse, and pursues Keir, Foulshiells's superior, to enter him. This pursuit was sustained against Keir summarily, albeit it was alleged for Keir, that Caprington could be in no better case than Foulshiells would have been, who, if he had been desiring to be received as vassal, and heir to his predecessor by the defender, he could not do the same by this summar pursuit, but ought to have his recourse to seek precepts out of the Chancery to that effect, conform to the order in such cases, and so Caprington ought to do the like ; which allegiance was repelled, and this order sustained. Like-as the LORDS declared they would sustain the same, when the like question oc-

No 17.

Where an immediate superior refused to enter a vassal, the Lords found, that his superior could not be charged to enter the vassal, by virtue of their Lordships deliverance on a petition, but by precepts from the Chancery.

No 18.

If the immediate superior be not entered, he may be charged to enter heir within 40 days, with certification, that if he fail, he shall lose the superiority during his life ; and if he fail, the mediate superior may be pursued *via actionis* to supply his