

No 387.

nualrent to his father; and albeit there was neither preceding adminicle to the sasine, nor yet any possession since the date thereof; and albeit it was only testified by the clerk's assertion, notary thereto) for pointing of the land, both for bygones and times to come, seeing the same was given by the Bailie and town-clerk, according to the usual form within burgh in such cases; which was sustained, albeit the sasine of the said annualrent bore not to be given to hold burgage; and which the defender alleged ought not to be respected as in other sasines of lands held burgage, where the assertion of the Bailie and town-clerk, testified by the clerk's instrument, is sufficient; which was repelled, and the sasine sustained.

Act. *Fletcher.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. 2. p. 246. Durie, p. 437.*

No 388.

1629. July 16.

SCOT *against* DEANS.

A SASINE of a house in the town of Hawick, found a good active title in a process, though granted only by the Bailie of the burgh, notwithstanding it is only a burgh of barony, and that it is the peculiar privilege (as was pleaded) of royal burghs, holding burgage, to have sasine granted by their Bailies; but here it is observed, that the superior concurred with the pursuer; but if he had granted a precept of *clare constat*, it would have been a more unexceptionable evidence.

*Fol. Dic. v. 2. p. 246. Durie.** * This case is No 20. p. 6899, *voce* INFERTMENT.

1629. July .

WILSON *against* STUART.

No 389.

A sasine of burgage lands to a man as heir to his father, was found sufficient to instruct him heir with regard to a process of wardance pursued by him.

ONE Wilson, as heir to his father, pursuing one Stuart to warrant a tenement in Glasgow, disposed by the said Stuart to his said father. It was found, That the pursuer's sasine produced to instruct him heir, being given by the Bailies of Glasgow, by hasp and staple, cognoscing him to be heir, was sufficient to instruct him heir, and to produce this action, albeit he was not heir served and retoured, the same being within burgh, and the pursuer being convened as heir, to pay to this defender the price of the land annailzied, in another process pursued against him, as heir *passive* of before; for it was found, that this party could not oppone, nor quarrel the right whereof she was author herself to the pursuer's father, and for which she convened the pursuer as heir, and so the sasine was sustained; but it might have been more doubted, if this sasine would have produced action against any third person, or any stranger pretending right to the land, albeit it will ever produce action against the tenants of

the lands, or any not having right, either for removing therefrom, or for the mails and duties thereof. No 389.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 246. Durie, p. 468.

* * Auchinleck reports this case :

A SASINE given by hasp and staple will not give the receiver of the sasine action to pursue as heir active, except it be for mails and duties of the lands wherein he is seased, and against the disponer of the tenement to warrant the same free of annualrents.

Auchinleck, MS. p. 210.

1630. July 9.

HOUSTON against MAXWELL.

ONE Houston being seased in a tenement in the town of Dumfries, as heir to his mother's brother's oye, cognosced and tried by an inquest before the town, pursuing thereupon for reduction of a disposition of the said tenement, made by his said predecessors, to whom he was cognosced nearest heir, as said is, to the said defender; the pursuer's sasine being quarrelled as null, because it flowed not upon a retour past the Chancery, without which had preceded, to have been the warrant of the sasine, no process could be granted for reducing of the defender's rights, especially the pursuer not being in possession; for albeit the same might be sustained to produce action for recovery of mails and duties, against naked possessors *sine titulo*, or to continue and retain possession, or to seek removing; yet it could not be a title *in petitorio* to reduce another party's heritable right, and could not instruct this pursuit *active*;—the LORDS repelled this allegiance, and found the sasine sufficient to produce this action, seeing the same was not pursued to qualify the pursuer's heir, but upon his sasine, as infest in the lands controverted; which, albeit it was given to him as heir, yet the controversy was for that land, wherein he was infest thereby, and not if he was heir thereby; for a sasine upon a precept of *clare constat* would have produced the like action to dispute upon that subject contained in the sasine which gave right to the lands, except it had been elided by one having a better right.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 264. Durie, p. 527.

1632. January 25. HAMILTON against DUNDONALD.

THE pursuer being seased upon a precept of *clare constat*, expressed in the bearing to be granted to the pursuer by the Master of Abercorn, as Commis-

No 390.

A sasine of burgage lands without a retour, found a sufficient title to pursue reduction.

No 391.