

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.

No 391.

sioner, and having power for that effect by the Earl of Abercorn his brother ; and the defender *alleging*, That no process should be granted on that sasine so propoting, while the warrant thereof were produced, seeing it was but the assertion of a notary, which ought not to have faith uninstructed, no more than if any stranger, not having right, had given such a precept ; and the pursuer *replying*, That this sasine was sufficient, without further production against this defender, who was a naked tenant, having no right at all ;—the LORDS found no process, while the precept and commission whereto the sasine was relative, were produced.

Clerk, *Gibson*.*Fol. Dic. v. 2. p. 244. Durie, p. 615.*

No 392.

A sasine *propriis manibus* by a husband, bearing to be in implement of a contract of marriage, was sustained as a title for mails and duties, if the contract should be produced *cum processu*.

1632. *January 27.* LA. MONTQUHANIE *against* COMMISSARY OF ST ANDREWS.

The Lady pursues the Commissary for payment of the duties of the lands wherein she was infest, and which were uplifted by him diverse years since her husband's decease, wherein she produced only for her title her sasine, bearing to be given conform to her contract of marriage ; against which the Commissary, who was infest by a public infestment proceeding on a comprising from her umquhile husband, *alleged*, That the same wanted an adminicle, and being only *assertio notarii*, that it proceeded on her contract of marriage, could not be a title to sustain this pursuit against him, except the warrant thereof were produced. THE LORDS took the pursuer's oath, if the contract were in her hands, which she declared she had not ; and in respect thereof, the LORDS found no necessity to produce the contract nor the adminicle of the sasine presently, but sustained the sasine for a title in this pursuit, and ordained the pursuer to prove her reply *cum processu*, that there was such a contract as the sasine propoted, which was the warrant of the sasine, which the LORDS admitted to be proved, and that the process ought no in the mean time to delay while that were proved, but ordained the cause to proceed.

Act. *Nicolson & Picairn*.Alt. *Stuart & Learmont*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 245. Durie, p. 615.*

No 393.

A sasine was granted to a wife *propriis manibus* for mere love and favour. A reduction was not sustained unless upon showing, that the wife was otherwise sufficiently provided for.

1639. *March 15.* HAMILTON *against* RELICT OF HAMILTON.

MR JOHN HAMILTON having right to a comprising of lands pertaining to umquhile Mr James Hamilton, deduced for his debt, pursues the relict of the said umquhile Mr James, for reducing of a sasine of some of the said lands comprised, granted to her by her umquhile husband, upon this reason, that the sasine was granted by the husband to his wife *propriis manibus*, only for mere love and favour, there being no other adminicle nor impelling cause for war-