

1631. February 18. LORD CRANSTON *against* SCOT.

THIS cause is mentioned the 16th of February 1631, No 60. p. 3661., *voce* ESCHEAT; and Andrew Scot, the compriser, now *alleging*, that the rebel, whose liferent was sought, nor his father, was never vassal to the Lord Cranston, (for he bruiked, by virtue of a contract, the right whereof he had comprised,) and the pursuer offering him to prove, that the rebel, or his father, had accepted a charter from him, whereupon also sasine had followed; the compriser *duplied*, that the reply was not relevant, except he would say, that he was validly and lawfully seased in the said lands; for if the sasine was null, (as indeed if any sasine was taken upon that charter, the same was null, for it was not registered conform to the act of Parliament, and had diverse other nullities therein,) whereby their being no sasine, or only a null sasine, which was alike, as if there had been no sasine, there could be no holding; and, consequently, the superior could claim no liferent by the annual rebellion of the vassal. THE LORDS repelled this allegiance, and found, that the sasine taken by the vassal, albeit it had nullities, or defects in law, especially where they flowed from the fact of the person's self who was seased, yet that notwithstanding the same was so null, that the superior was not thereby prejudged of his casualty of liferent; for he being vassal to the superior, thereby also the casualty fell to him; neither was this allegiance found the more relevant, as being proponed by a compriser, who alleged, that he had comprised the rebel's contract of alienation of the lands made betwixt him and the Lord Cranston, by virtue of the right whereof he might bruik against the granter, as he did, and by the which right no liferent could fall to the Lord Cranston, albeit he was rebel; but the king would have right thereto, if any liferent fell. And so he *alleged*, that he, as compriser, might competently propone the nullity of that sasine, which was repelled. See PERSONAL OBJECTION. REGISTRATION.

*Fol. Dic. v. 1. p. 518. Durie, p. 571.*

1637. February 27. LOCKHART *against* SIMPSON.

By contract of marriage betwixt umquhile Helen Johnston and Laurence Simpson, her son, taking burden for Margaret Simpson, daughter to the said Helen, and sister to the said Laurence, on the one part, and Archibald Hamilton on the other part, the said Helen and Laurence are bound to pay 2000 merks to the said Archibald in tocher good; to which sum, Jean Hamilton, only daughter of that marriage, having made Steven Lockhart assignee, with consent of the said Archibald, her father, which assignation is subscribed by he father, and consented to by him; whereupon, the assignee pursuing the

No 30.

In a declaration of a liferent escheat, it was found *jus tertii* to the rebel vassal to plead that his sasine was null, because even although the sasine were reduced, he could derive no benefit re- from the duction, for his liferent escheat would then fall to the Crown instead of the superior.

No 31.

An assignation to a bond was executed by a person who had no right to it, but the creditor subscribed the assignation as consenter. The Lords found it was *jus tertii* to

No 31.  
the debtor to  
plead that  
the cedent  
had no right,  
but they or-  
dained the as-  
signee to  
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at all hands.

heir of Laurence Simpson for payment, it was *alleged*, that the contract was null, being only subscribed for the mother and her daughter by one notary, against the tenor of the act 80th, Parliament 1579. This allegiance was repelled, because it was a contract of marriage, whereupon marriage had followed, and that it was subscribed by Laurence Simpson's own hand, whose son is convened. And it being further *alleged*, that this assignation ought not to be sustained, being made only by the daughter, with consent of the father, to whom the right of the sum did only justly belong, and who cannot be denuded of his right so established in his person, except he had been formally denuded by an assignation thereof, principally made by himself; so that this assignation, which is only a naked consent, cannot be found *habilis modus* to transmit the full right to the assignee, specially where the father is now dead; this allegiance was repelled, seeing no party having interest to propone this allegiance did oppose the same, and it was not competent to the debtor to propone it; but the LORDS ordained the pursuer to find caution to warrant the defender at all hands who might pretend interest to the sum libelled.

*Fol. Dic. v. 1. p. 518. Durie, p. 832.*

1662. July 18. LORD FRAZER *against* LAIRD OF PHILLORTH.

No 32.  
In a declara-  
tor of proper-  
ty, the de-  
fender pre-  
tending no  
right in his  
person, was  
not allowed  
to object to  
the pursuer's  
title.

THE Lord Frazer pursues declarator of property of the barony of Cairn-builg, against the Laird of Phillorth, as being infeft as heir to his father; who was infeft as heir to his grandfather; who was infeft upon the resignation of Frazer of Doors; and also upon the resignation of the Laird of Pitsligo, who was infeft upon an apprising led against Doors; and also as being infeft upon an apprising at the instance of one Henderson, led against Doors; and declared that he insisted *primo loco* upon the two first rights flowing from Doors and Pitsligo. The defender *alleged* absolvitor, because the defender, in an improbation against the pursuer and his father, obtained certification against Doors' sasine, so that it being now improved, all the rights libelled on, fall *in consequentiam*, because Doors is the common author to them all; and if he had no real right, all their rights are *a non habente potestatem*; so that now the pursuer has no more in his person, but a disposition made by Phillorth's grandfather to Doors, and a charter following thereupon, and is in the same case, as if Doors upon that ground were craving declarator of property, which he could not do, nor would the Lords sustain it, albeit there were no defender, because that can be no right of property where there is no sasine. The pursuer *answered, imo*, That the defender is no ways relevant, nor is the pursuer in the case of a declarator, upon a disposition or charter without a sasine, because he produces a progress of infeftments, and is not obliged *hoc ordine*, to dispute Doors his authors' rights as being *a non habente potestatem*, which is