

No 395.
port a wife's
sasine even in
competition
with an ap-
prising.

fence, That she stood infest in the lands, by a right from her husband before the apprising, but for proving thereof she only produced her sasine.

Which the LORDS found not to prove without a warrant, and therefore discerned.

She suspends, and now produces her contract of marriage, as the warrant of the sasine, and offers to make faith, that she had found it out since the decret; and farther *alleged*, That through neglect of the advocates or clerks, her defence was not proponed, noways acknowledging the quantities libelled, which she offers to prove to be exorbitant. It was *answered, first*, That *prætextu instrumentorum de novo reptorum sententiæ non sunt retractandæ. zaly*, The contract produced is not the warrant of the sasine, but a bond granted for implement of the contract, and relating to the sasine.

THE LORDS reponed the suspender, as to the circumduction of the term, she making faith, &c. and found the contract of marriage a sufficient adminicle to astruct the sasine, seeing it related to a bond for the same cause, but refused to repon her as to the quantities.

Fol. Dic. v. 2. p. 245. Stair, v. I. p. 290.

1668. June 19. RELICT of Galrigs *against* WALLACE of Galrigs.

No 396.
A sasine *propriis manibus* of a husband to his wife, who had no other provision, found a sufficient title.

THE Relict of Galrigs pursues for mails and duties upon her sasine, given *propriis manibus*. It was *alleged* for Galrigs, No process, because the sasine is but *assertio notarii*, without a warrant, there being neither a contract nor obligation to give such a sasine. It was *answered*, That instruments of sasine given to a wife, *propriis manibus*, have a sufficient adminicle and presumption by the marriage, and the duty of the husband to provide the wife, especially where there is no contract nor other provision, but most of all where the wife renounced her jointure she had with a former husband in favour of the grant-er of the sasine, and his creditors, which is a strong presumption he would give her something in lieu thereof;

Which the LORDS sustained.

Fol. Dic. v. 2. p. 245. Stair, v. I. p. 541.

* * Gosford reports this case :

JEAN WALLACE, Relict of William M'Kerral of Hillhouse, being again married to Wallace of Galrigs, by contract of marriage, she was provided to two chalders of victual out of the lands of Correath, which thereafter she renounced, and consented to a disposition thereof, upon sasine given her by her husband *propriis manibus* of two chalders of victual out of other lands; whereupon after the death of her husband, her son, as assignee, did pursue Galrigs heir,

for yearly payment of the said victual during his mother's lifetime. This sasine was found a sufficient title, notwithstanding it was *alleged*, That it not being subscribed by Galrigs, it was only *assertio notarii*, without any adminicle, the first infestment upon the contract of marriage being renounced, and the renunciation bearing nothing of these lands that came in place thereof; yet the LORDS found, that in respect of the marriage and renunciation of her former provision, the sasine should be sustained; but discharged the extracting of the sentence until the notary and witnesses insert be all examined upon oath, upon the verity of the sasine.

Gosford, MS. p. 1.

No 396.

1669. February 11.

BUCHAN against TAITs.

IN ANNO 1623, George Tait of Pirn gave a saisin *propriis manibus* to George Tait his eldest son, and a bond of that same date, bearing that he had given sasine, and obliging him to warrant the same, reserving his own liferent. Thereafter *in anno* 1640, he contracts in marriage with Janet Buchan, and for 2500 merks of tocher, obliges him to infest her in the same lands of Pirn, wherein his son was infest, whereupon she now pursues a reduction of George Tait younger's infestment against his daughters, upon these reasons; *1mo*, That the sasine *propriis manibus*, was only the assertion of a notary without a warrant; *2do*, That the sasine had not four witnesses; *3tio*, That this was a clandestine latent right, most fraudulent betwixt a father and his apparent heir, never having been published, or taken effect by any possession, and cannot prejudice this pursuer, who is a most privileged creditor, and brought a competent tocher with her; *4to*, That this being an infestment by a father to his apparent heir, then in his family, it was but as the *legitim* of children, which is still ambulatory at their parents' disposal, and so must be affected with this posterior burden of the father's marriage. It was *answered* to the *first*, That the bond of the same date with the sasine, acknowledging the same, is a sufficient adminicle, and is equivalent, as if the father had subscribed the sasine; To the *second*, There is no law requiring four witnesses to a sasine, for that act of Parliament is only where a party subscribes by a notary, but relates not to notary's instruments subscribed by themselves, upon warrants, or adminicles, without which they are not valid with forty witnesses, and without which two witnesses are sufficient; To the *third*, This infestment is no ways fraudulent, or latent, seeing it is registrated in the register of sasines, and reserves the father's liferent, whose possession is the son's possession, and cannot be prejudged by a deed so long posterior thereto; To the *last*, Infestments taken to children by parents being registered by parents, can never be recalled.

THE LORDS assoilzied from all the reasons of reduction, and sustained the defender's sasine.

Fol. Dic. v. 2. p. 244. Stair, v. 1. p. 602.

No 397.

A sasine given by a father to his son *propriis manibus* sustained, being registered *debito tempore*, and accompanied with adminicles.