

SASINE.

SECT. I.

Symbols and Formalities of Infestment of Annual Rent.

1680: *December 23.* LADY LAMERTOUN *against* LAIRD of POLWART.

ALEXANDER HUME of Hutton-hall, and Elizabeth Hume, his spouse, and longest liver of them two, being infest in the barony of Halyburtoun, to the effect, that the longest liver might uplift 600 merks of the readiest of that rent; the wife having survived, assigns this right to the Lady Lamertoun, who pursues the tenants. Compearance is made for the Laird of Polwart, who has bought the lands, and alleges that the sasine granted to Hutton-hall and his spouse is null, being in effect an infestment of an annual-rent, and bears not the delivery of a penny money, which is the symbol of an annual-rent; and though it were an infestment of property, yet it is null, because it did not bear, "Delivery of earth and stone," which is the necessary solemnity and symbol of an infestment of property, but only deliverance of the ground of the land, according to the precept, which precept is not engrossed in the sasine, but related only; and if the fixed formalities of sasines be dispensed with, and general words sustained in place thereof, it will be of most dangerous consequence for the lieges to alter the constant stile, to sustain the deeds of ignorant and insufficient notaries; for then if the sasine should only bear a narrative of a precept, and that sasine were given conform thereto, it might upon the same grounds be pretended sufficient. It is true that Durie observes, "That an old sasine clad with possession, was sustained upon general terms, without expressing the special symbols and formalities," which does not quadrate with this case, where the sasine is recent, and little or no possession. It was answered for the pursuer, That whatever might be alleged in a competition to prefer a more solemn and formal infestment, yet Polwart is not in that case, having acquired from

No. 1.

A sasine sustained, tho' it did not repeat the precept, and bore only deliverance of the ground.

No. 1. Blaikiter, and the matter being litigious with his author, the Lords did first by a sentence of the Outer House, and then by a deliverance *in prasentia*, upon a petition for Blaikiter, sustain this sasine, though the same allegiances were then proposed, yet it is now *res judicata*. And albeit the notary might be censurable for not exact keeping of the style and form, yet the sasine cannot be thereupon annulled.

The Lords, as before, sustained the sasine, albeit they inclined to depose the notary for altering the style; but they found that he was dead.

Fol. Dic. v. 2. p. 362. Stair, v. 2. p. 824.

1702. January 20.

KER of MORISTON *against* the CREDITORS of SCOT of Vogrie.

No. 2.

A sasine reduced, being upon an heritable bond, and not bearing delivery of a penny money.

IN a competition betwixt Ker of Moriston, and the Creditors of Scot of Vogrie, the Lady Vogrie producing a sasine upon the estate of Eccles, and craving preference thereon to Moriston, it was objected, the sasine was null, because, being an infestment of annual-rent, it wanted the delivery of the ordinary symbol, viz. a penny of money. Answered, It bore tradition of earth and stone on the ground of the lands, conform to the precept of sasine in all points; which relative words must take *in traditionem denarii*, that being expressly mentioned in the precept: and that the Lords have sustained sasines wanting these or the like words, 23d March, 1631, Somervel of Drum, Sect. 3. *h. t.* and 15th March, 1631, Smeton, Sect. 3. *h. t.* where the sasine of a mill was sustained though wanting the symbol of a clap and happer, because it bore these general words, *cum omni juris solemnitate*; and the reference here to the precept is equivalent. Replied, Law and custom has determined the proper symbol for every right, and without the observation thereof, has annulled the deed; and the cases cited do not meet: for there the mentioning the legal solemnities to have been used, can admit no other construction but that *omnia erant debite et solemniter acta*; whereas here the relation made to the precept of sasine, refers to the manner of holding, and clauses of reversion, and not to the symbol of a penny. The Lords, by a plurality of seven against six, reduced the sasine on this defect, and found it null; for they thought, since an annual-rent has a special characteristic, and distinguishing symbol from right of property, it ought to be observed.

Fol. Dic. v. 2. p. 362. Fountainhall, v. 2. p. 139.

1724. February 26.

Mr. WALTER STIRLING and other CREDITORS Adjudgers of the Estate of BALLAGAN, *against* the CREDITORS ANNUAL-RENTERS upon the said Estate.

No. 3.

The same subject agitated, but not decided.

IN the ranking of the creditors of Ballagan, a competition arose betwixt the adjudgers and annual-renters: the adjudgers had charged the superior, and the