

REGISTRATION.

1556r

allowance; and if this preparative be laid down, it may be of dangerous consequence to purchasers, for there may be a latent expired apprising, and if valid without allowance, where shall he find it, or come to the knowledge of it? But the LORDS would not recede from the current of the decisions, and therefore brought it in *pari passu* with the rest, though it was not allowed to this day, much less within the sixty days after its leading.

*Fol. Dic. v. 2. p. 332. Fountainhall, v. 1. p. 825.*

No 44.

1699. July 4.

MR WILLIAM COCHRAN, Pétitioner.

MR WILLIAM COCHRAN of Kilmaronock, by petition, represents to the Lords, that he being heir to his brother Polkelly, his sasine is amissing, but the notary being on life has given a new extract of it out of his protocol book; but Sir John Fowlis, Keeper of the Register of Sasines, scruples to mark it of the old date, without the Lords' warrant. THE LORDS having appointed one of their number to compare the protocol book, with the extract now craved to be marked, it appeared to be but a minute, wanting the clauses of stile which the notary had now inserted and engrossed; and there being preferable rights on the land, who were concerned this sasine should not be made up, (though they declined formally to appear), the LORDS first considered, whether this could be done summarily *per madum quarelae* on a bill, or if it required a process; and if the last, then *adq*, Whether it behoved to be done by a proving of the tenor, or a summons of extention, calling the notary and others? There was one instance where the like had been granted on a bill to Sir Andrew Ramsay, 2d January 1678, No 32. p. 13553; but the LORDS doubted they could allow it any otherways *hoc ordine* but in the precise terms as it stood in the notary's protocol, and even then *periculo petentis*, and reserving the right of third parties, and that Sir John Fowlis behoved to narrate his warrant; and therefore superseded to give answer unless they would take it on their peril.

*Fol. Dic. v. 2. p. 333. Fountainhall, v. 2. p. 56.*

No 45.

How a sasine amissing is to be supplied.

1700. July 3.

Competition Mr JAMES HAY and the other CREDITORS of Hay of Monkton.

THE LORDS advised the competition betwixt Mr James Hay and the other Creditors of Hay of Monkton. They *objected* against his adjudication, That not being allowed, they were preferable by the 31st act of Parliament 1661. *Answered*, He was within year and day of the first effectual comprising; and, by the 62d act of the same Parliament, all such are brought in *pari passu* without noticing their allowance; and in many cases the Lords had so determined, 17th.

No 46.

Found in conformity to Brown against Porterfield, *supra*.

No 46.

February 1698, Bancriff and the Creditors of Park, No 44, p. 13560. THE LORDS considered the case here, and some thought the current of decisions not so consonant to the express terms of that 31st act; yet the LORDS observed an exception reserved in the end of it, but prejudice of any further diligence by infestment or charging the superior; so that, if one procure himself infest without an allowance, it is as valid as if he had been allowed, the design whereof is only to obtain infestment. THE LORDS would not resile; but, by the plurality, sustained the adjudication as they had oft done before.

*Fol. Dic. v. 2. p. 332. Fountainball, v. 2. p. 101.*

1703. December 17.

SIR WILLIAM KEITH of Ludwhairne *against* SINCLAIR of Diren.

No 47.

A competition betwixt a purchaser from a son infest on a precept of *clare* and the sasine not registered, and a purchaser from the daughter also infest upon a precept of *clare*, as heir to her father, passing by her brother, and her infestment registered. The purchaser from the son preferred.

IN the mutual reductions and competitions for mails and duties of certain lands in Caithness, which sometime belonged to one John Keith, it was *alleged* for Sir William Keith; That the said John Keith being common author and undoubted heritor of the lands in question, he dying, left only two children, Hugh and Elizabeth Keiths; and Hugh, his only son, being infest upon a precept of *clare constat*, disposed to Nathaniel Keith, from whom Ludwhairne has right by progress, and thereby is undoubtedly preferable to Diren, whose father, after the decease of Hugh Keith, obtained a right from Elizabeth the sister, and procured a precept of *clare constat* to her, as heir to John Keith her father, passing by Hugh Keith, Ludwhairne's author, as appears by his progress produced.

It was *answered* for Diren; That John Keith being the common author, he, as deriving right from the daughter, was preferable to Ludwhairne; because the brother's sasine was never registered, and so was null as to him, a third party, acquiring from the sister *bona fide*, and for an onerous cause.

It was *answered*; The act of Parliament anent registration of sasines does not concern the case in question; for, *1mo*, The narrative of the act bears, that, considering the great hurt sustained by the fraudulent dealing of parties, who having annailized their lands, concealing former rights made by them, &c.; so that the act was only designed to regulate double rights flowing from a person truly infest; whereas here there is no competition of real creditors deriving right from the brother infest; *2do*, The certification of the act in case of not registration, is not simple nullity, but only that the sasine shall make no faith in prejudice of a third party acquiring a perfect and lawful right to the lands and heritages in question, without prejudice always to use the said writs against the maker thereof, his heirs and successors; so that the brother's sasine was sufficient against the sister, and those deriving right from her, who could not pass by her brother, and enter heir to her father.