

No 93.

against the warrant of a sasine by hasp and staple; for prescription excludes not improbation, or the necessity of producing grounds and warrants; but even in improbation, a burgage sasine would be good without production of a charter, Arg. Decis. December 14. 1671, Duff and Brown *contra* Forbes, *voce* PROOF; yea, charters under the Great Seal, that are sustained without producing either the procuratory which is the deed of the party, or the signature passed in Exchequer which is the superior's deed, are but the attestations of persons in office; therefore, in burgage tenements, resignation made and infeftment given by the Bailie to the parties personally, attested by the clerk in his office, ought to be sustained in matter of prescription, without necessity of the Bailie's subscription or production of the party's procuratory; so that within burgh, sasines upon resignation have the effect of a charter precept and sasine, and sasines in favours of heirs by hasp and staple have the effect of sasines and returns, or precepts of *clare*.

THE LORDS sustained prescription upon the sasine in burgage lands containing instruments of resignation with continued possession on sasines by hasp and staple.

*Forbes, p. 46. & 56.*

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#### SECT. IV.

##### Title of Part and Pertinent.

1711. February 22. EARL OF LEVEN *against* JAMES FINDLAY of Balchristie.

No 94.

Forty years uninterrupted possession of land, as part and pertinent of that expressed in the possessor's infeftment, relevant to declare the property to belong to him, even in competition with one specially infeft in the same land.

IN the process of declarator at the Earl of Leven's instance, against James Findlay, the Lords sustained it relevant for the pursuer, to declare the Links of Balchristie to pertain in property to him as heretor of the lands of Drummeldrie, that he prove forty years uninterrupted possession of the said links, as part and pertinent of his lands of Drummeldrie; notwithstanding that the defender produced a special infeftment of the lands of Balchristie and links thereof, in favours of his authors *in anno* 1601; unless he offer to prove possession, or other interruption, conform to the decisions November 17th 1671, Young *against* Carmichael, No 14. p. 9636.; and 20th February 1675, Countess of Murray *against* Weems. No 15. p. 9636.; and Stair, Instit. B. 2. T. 3. § 73. Because, seeing it is not to be supposed that any person could be infeft in every part of his lands *per expressum*, it is sufficient to instruct forty years possession of lands reputed part and pertinent of those specially named in his infeftment. For otherwise, it were easy for any man to pro-

cure, upon his resignation of his own lands, infestment in a neighbouring heritor's lands, under a new or special name, which would unsettle all property.

No 94.

*Fol. Dic. v. 2. p. 104. Forbes, p. 503.*

1714. July 2.

DUNBAR against SINCLAIR.

No 95.

Forty years possession of land as part and pertinent of other lands contained in a charter, not sustained as a right of prescription, the charter having been lately granted, and consequently not a warrant for the possession.

*Fol. Dic. v. 2. p. 104. Forbes, MS.*

\* \* \* This case is No 18: p. 9640. *voce* PART and PERTINENTS.

## S E C T. V.

Title requisite in the Prescription of Right to Teinds and Rights granted by Ecclesiastics.

1627. February 17. DOUGLAS and STUART against TENANTS.

No 96.

In a removing of William Douglas and John Stuart against the Tenants of Aymoth and Coldingham, an exception being proponed by Hume of Nynwells upon his heritable infestment, as heir to his goodsir, who also was infest as heir to his brother, who was infest by the Laird of Banff, who also was infest and in possession conform thereto these forty years bypast; this exception was repelled in this judgment possessor, because the defender alleged not that either his own nor any of his predecessors infestments were confirmed, the same being kirk-lands; and it was repelled, where the excipient alleged, that in this judgment he ought not to dispute upon the validity of his author's right, after so long possession.

Act. Craig &amp; Stuart.

Alt. Nicolson &amp; Belshes.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 104. Durie, p. 278.*