

by law, upon the dissolution of the marriage. For then the Lady, as being neither creditor nor purchaser, must only take her division, in case the nature of the subject will allow of a division, which in the present case it does not.

THE LORDS repelled the defence on the tailzie, the same not being registered in the particular books appointed for registration of tailzies.

Act. *Sir James Nasmyth.* Alt. *Sir Walter Pringle.* Clerk, *Mackenzie.*

*Fol. Dic. v. 2. p. 332. Bruce, v. 1. No 128. p. 167.*

1716. July 20.

JOHN BEAUMONT, and JAMES FAIRHOLM, *against* The Earl of CASSILLIS.

IN a competition of the Creditors of the deceased Earl of Cassillis, there being an interest produced for John Beaumont, viz. a bond after the English form, and an accepted bill for James Fairholm, both dated in November 1698, and upon both which adjudication followed some years thereafter; there was likewise produced, for the now Earl of Cassillis, articles of marriage betwixt the deceased Earl and his son Lord Kennedy, on the one part, and my Lady, now Countess of Rutherglen, on the other, dated in June 1697, whereby, among other things, the fee of certain lands are provided to the Lord Kennedy, and the heirs-male of the marriage; and whereupon there was a contract of marriage in the Scots form extended, dated in September 1698, whereupon a sasine is taken on the 10th, 11th, and 12th of October, and registered the 6th of December thereafter, whereunto the present Earl has right as heir of tailzie.

It was *alleged* for Beaumont and Fairholm, That their debt being contracted before registration of the sasine on the contract of marriage, though, after the date of the articles of contract, and even the sasine itself, establishing the fee in the Lord Kennedy's person, they ought to be preferred, by reason that our law has fixed upon the registration, as the publication to interpel creditors from contracting with parties who were previously in the right of the subject conveyed; and so the 13th act of Parliament 1693 declares, That, in all competitions, sasine shall be preferred according to the date and priority of their registration: And the act immediately following proceeds upon a narrative, that, through the not keeping the minute-books of registration in good order, (that purchasers and creditors might know with whom they may safely contract), the lieges have been greatly prejudged; and therefore by that act it was statuted, that the Keepers of the registers shall keep minute-books of all writs presented to them in order to be registred, and that the minute be immediately signed by the presenter of the writ, and also by the keeper, to be patent to all the lieges who should desire inspection of it, gratis; from which it appeared, consequently, that parties might safely contract, when they knew the party

No 50.

No 51.

Whether registration of a sasine is to be accounted from the signing of the keeper's minute-book, or from the time of inserting it in the record?

No 51.

with whom they were contracting standing infest upon an opulent estate, and saw no other infestment upon record, whereby he was deruded.

*Answered* for the Earl, That the competitors were not infest upon their adjudications; and, though they were, yet the adjudications themselves being some years posterior to the Lord Kennedy's infestment, the 13th act of Parliament 1693 did plainly determine the question against them; and as to the subsequent act, that only prescribes rules for the better keeping of the minute-book or registers, but introduces no new privilege in favours either of purchasers or creditors who transact still with the hazard that infestments may be duly taken, which, though not registered, may be registered within sixty days after taking thereof, that time being allowed to all such as have taken infestment for the registration thereof; and the same being registered, validates the sasine *retro* from the date, except in competition with other infestments registered before, which is not the present case; for here even the contract of marriage itself, though without sasine, would have been good against those debts contracted after the same, while they continued only personal; *2do*, The act 1693 did not concern this case; for the inconveniency there taken notice of, was, that though sasines were duly presented and registered, yet the minute-book was not duly kept, nor the note of the sasine bearing the day and hour when the same was presented and registered therein set down; so that parties looking into the said minute-book, and finding no sasine of the lands booked, were often induced to purchase, or lend money, even after registration of the sasine; and yet, even in that case, there is no nullity statuted against the sasine not regularly inserted in the minute-book, but only a penalty against the keepers.

"THE LORDS preferred the Earl to the other competitors Beaumont and Fairholm."

For the Earl, *Graham*.

Alt. *Sir Arch. Sinclair*

Clerk, *Robertson*.

*Fol. Dic. v. 2. p. 332. Bruce, v. 2. No 22. p. 28.*

1726. July 22.

Competition JEAN EDMONSTON *against* ELIZABETH THOMSON.

No 52.  
Abbreviate of  
adjudications  
must be re-  
corded.

JEAN Edmonston, having right to an adjudication of certain lands, craved to be ranked *pari passu* with the first effectual adjudication; in the person of Elisabeth Thomson, being within year and day thereof.

It was *objected*, That the abbreviate of Jean Edmonston's adjudication is not recorded; and Elisabeth Thomson's adjudication, duly recorded, is preferable by act 31st Parliamept 1661.

*Answered*, The act 62d Parliament 1661, brings in *pari passu* all apprisings within year and day of the first effectual apprising, without any mention of allowances; therefore the act 31st, concerning allowances, cannot relate to such