1743. *July* 5. LORD ERSKINE *against* ———.

[Elch., No. 4, *Sasine.*]

A CHARTER from a subject bore a clause of union of several tenements into one, and appointed a particular place where sasine should be taken of them all, dispensing with taking sasine upon every particular tenement; and, accordingly, the precept of sasine directs the sasine to be given at that particular place. As the Lords had found that no subject had the power of union and dispensation of that kind, it was thought proper, as several of the tenements lay very discontiguous, one of them particularly in another county, to take infeftment upon each parcel of land by itself.

It was objected against this infeftment,—That it was null, as being disconform to the precept, which directed sasine to be taken at a certain place for the whole lands.

To this it was answered,—That, if the precept had only directed sasine to be given, without any thing more, there was no doubt but the sasine taken thereupon was valid: that the dispensation which is added, is always understood to be in favour of the vassal, and a privilege which he may use or not. Which the Lords sustained.

1743. *July* 21. MARY M'WHIRTER *against* ROBERT MILLAR.

[Kilk., No. 3, *Service, &c.*; C. Home, No. 247; Elch., No. 18, *Husband and Wife.*]

HERE there were two questions: 1*mo*, Whether possession, in this case, was equal to a confirmation; 2*do*, Whether, upon the supposition that it were so, there was any evidence here that the son had possessed his mother's third of moveables, or if the father's possession, considering that the son was minor, and he his administrator-in-law, could be accounted the son's possession.

As to the first, the Lords, upon a hearing in presence, found, by a great majority, that there was no necessity for a confirmation, and that the possession was sufficient. But, that the decision may not be thought to apply to every case, the circumstances of this case are well to be considered: 1*mo*, The subject-matter in dispute was household furniture and plenishing; there were no *nomina debitorum*, which it was allowed required confirmation to their transmission, because of them, as being *jura incorporalia*, there could be no possession. And it seemed to be the opinion of the majority, that, even if the debtors made payment, the sums would not be transmitted, and they might be obliged to pay over again to the next nearest of kin making up his titles. 2*do*, It was a continued possession for many years, and not a momentary one; but, as to the disposal of the moveables, the decision did not seem to rest upon that, and it would have gone the same way if there had been only possession. 3*tio*, There