And, on considering them, the Court were nearly unanimous in thinking that Alexander's service could, in all the circumstances of the case, be ascribed only to the entail, and that though his service had been in fee-simple, as his right to the lands remained personal, the entail which qualified it was, in terms of the decisions of Westshiels and Carleton, effectual against the defenders. No. 6.

The leases were reduced.

Lord Ordinary, *Meadowbank.* Act. *H. Erskine, Rae.* Alt. *J. W. Murray.*
Clerk, *Home.*

D. D. *Fac. Coll. No.* 168. *p.* 382.

1801. *February* 24.

MRS. ANN RONALDSON DICKSON, *against* JOHN SYME.

No. 7.

When the institute in an entail, who is likewise heir of line, dies in apparency, after the entail has been recorded, and before infeftment has been taken on it, the next heir of entail, by making up titles passing him by, does not become liable for his debts, in terms of the act 1695, C. 24.

Objection to an instrument of sasine, that the doquet of the notary bore the instrument to have been written by the hand of another, altho' the date, and names of the procurator, bailie, and

ANDREW RONALDSON executed a strict entail of the lands of Blairhall, Longleys, and Wester Broom, which was duly recorded.

His eldest son John Ronaldson, the institute, who possessed the whole lands for many years, made up titles to Blairhall in terms of the entail. He afterwards got involved in debt, and wished to take up Longleys and Wester Broom, so as to enable his creditors to attach them. With this view, he obtained from Sir William Erskine, as superior, a precept of *clare constat* to himself as heir-at-law to his father, without referring to the entail, and on this precept he was infeft.

At granting this precept, it was not attended to that Sir William Erskine had previously sold the superiority to Mr. Muter, and that he was infeft.

The doquet of the instrument of sasine in favour of Mr. Muter, bore, that it was written *manu aliena*, though it appeared *ex facie* of it, that the date, with the names of the procurator, bailie, and witnesses, were written by the notary himself.

Ann Ronaldson Dickson, the eldest sister and next heir of entail to John, after his death, brought against John Syme, to whom John had conveyed Longleys and Wester Broom, as trustee for his creditors, a reduction of the precept of *clare constat*, and infeftment obtained by the deceased as being void, from having been granted by Sir William Erskine after he was denuded, so that John Ronaldson having died in apparency with regard to these lands, his debts could not be effectual against them.

Against this action, Mr. Syme, besides stating a personal exception against the pursuer from her alleged accession to the trust,

Pleaded: 1*mo*, The pursuer is liable for her brother's debts in terms of the act 1695, C. 24. from her having made up titles passing him by. As no infeftment was taken on the entail as to Longleys and Wester Broom, and as

No. 7. witnesses, were written by himself,— repelled.

John Ronaldson was heir of line to his father, as well as institute under it, the sanction of the statute seems directly applicable to her.

Answered: The act 1695, C. 24. does not at all apply to tailzied succession, as it could not be meant that the creditors should be in a better situation than if their debtor had made up proper titles; 13th May 1795, Graham against Graham, No. 56. p. 15439.

Mr. Syme

Pleaded: *2do*, Mr. Muter's infeftment is void, and consequently John Ronaldson's titles are effectual, because the doquet of Mr. Muter's instrument of sasine asserts a falsehood, in stating that the deed was written by the hand of another, although several essential particulars of it were written by the notary himself.

The deed would have been ineffectual if these particulars had not been mentioned in it, and the legal presumption is, that they were left blank when the deed was originally prepared, attested by the witnesses, and authenticated by the notary; and the case is the same as if it had been produced in that situation.

Even a private deed, vitiated in any important particular, is wholly disregarded; and still more is this the case of a deed which contradicts itself, and relates to a matter of public form, which cannot be dispensed with; 20th February 1680, Gordon, No. 115. p. 3767; 6th March 1624, Steuart, No. 128. p. 3778; 17th December 1787, The Trustee for Johnston's Creditors against Macewan, (not reported.) It is true, that the mentioning the name of the writer of notorial instruments is not made necessary by statute, because originally they were written wholly by the notary himself; but practice has made it essential, that the doquet should state whether the deed be written by himself or by another, or partly by both; and it is dangerous to relax from established forms; Craig, *L.* 2. *D.* 7. § 13.

Answered: A deed is said to be written by the person who writes the substance of it, though the testing clause, and other less important parts of it, such as the names of the procurator and bailie in the precept of sasine, &c. are filled up by another. In the same manner, here, where the whole instrument was written by another, except the part which is always left blank till after the sasine be taken, the notary might say, without impropriety, that it was written *manu aliena*, though he himself filled up the date, the names of the attorney, bailie, and witnesses.

The mention of the writers' names in notorial instruments is not made essential by statute; 1686, Cap. 17.; 1696, Cap. 15.; Acts of Sederunt, 17th January 1756; Erskine, B. 3. Tit. 2. § 16. Nor is it ever mentioned in practice, when he is a different person from the notary himself. Indeed, the whole effect and authenticity of instruments of sasine depend upon the part of the doquet which attests the facts done in his presence; Stair, B. 2. Tit. 3.

§ 17. It is quite immaterial, and they need not specify, by whom they are written. It is sufficient that the doquet bear *fideliter scriptum.* No. 7.

The Lord Ordinary reported the cause on Informations.

The Court decerned in terms of the libel; and the judgment was adhered to, upon advising a petition with answers.

Lord Ordinary, *Balmuto.* Act. *John Dickson.* Alt. *R. Craigie.*
D. Douglas. Clerk, *Pringle.*

D. D. *Fac. Coll. No.* 221. *p.* 499.

*** See case between these parties, APPENDIX, PART I. *voce* SUPERIOR AND VASSAL, No. 3.

1801. *February* 26.

MAJOR GEORGE SUTHERLAND *against* HELEN and CATHARINE SINCLAIRS, and ALEXANDER BAILLIE.

No. 8.
An omission in the dispositive clause of an entail found to be supplied by the terms of the procuratory of resignation.

Construction of certain clauses occurring in an entail.

ROBERT MURRAY, in 1710, executed an entail, by which he disponed his estate of Pulrossie, 'in favour of John and George Murrays, sons to George 'Murray, brother-german to me the said Robert Murray, and the heirs-male 'to be procreated of their bodies; whilks failing, to James Sutherland of 'Clyne, and the heirs-male of his body; and failing heirs-male of the said 'James Sutherland his body, *to John Sutherland, eldest son to the deceased Cap-* 'tain Alexander Sutherland of Little Torboll; whilks failing, to Kenneth Suther- 'land, second son to the said Alexander Sutherland; whilks failing, to Alex- 'ander Sutherland, third son to the said Captain Alexander Sutherland, *and* 'the heirs-male of his body; whilks failing, to William Sutherland of Hamme, 'and the heirs-male of his body.'

Although the heirs of John and Kenneth Sutherland are here omitted, yet the procuratory of resignation grants warrant for resigning the lands *seriatim* 'to John Sutherland, eldest son to the deceased Captain Alexander Sutherland 'of Little Torboll, and the heirs-male of his body; whilks failing, to Kenneth 'Sutherland, second son to the said Captain Alexander Sutherland, *and the* 'heirs-male of his body,' &c.

The entail further provides, 'that it shall not be lawful, nor in the power 'of the said John and George Murrays, their heirs-male, and of tailzie suc- 'ceeding them, as said is, to contract or take on sums of money, whereby the 'said lands and others foresaid may be affected or evicted from them, except- 'ing for payment of the said debts resting by me the said Robert, in manner 'above mentioned.'