

*Appellant's Authorities.*—Nicolson, 16th Dec. 1806, (No. 2. App. Legacy.) 3 Stair's June 20, 1827.  
Inst. 8. 21. 3 Ersk. Inst. 2. 9. Voet, 36. 2. 2. Grahame, 17th Feb. 1807, (No.  
3. App. Legacy.) Blackstone's Com. vol. 2. p. 379. Duncan, 27th June 1809, (Fac.  
Col.) Roxburghe Cause.

*Respondent's Authorities.*—Grahame, 17th Feb. 1807, (No. 3. App. Legacy.) Duncan,  
27th June 1809, (F. C.) Glendinning, 30th Nov. 1825, (4 Shaw and Dunlop, No.  
191.) Inglis, 16th July 1760, (8084.)

RICHARDSON and CONNELL,—SPOTTISWOODE and ROBERTSON,  
—Solicitors.

JAMES ROSE INNES, Esq. Appellant.—*Adam—Keay.*

No. 56.

JAMES, EARL OF FIFE, Respondent.

*Sasine—Member of Parliament—Freehold Qualification.*—Held, ex parte, (affirming  
the judgment of the Court of Session,) in a question relative to freehold qualification,  
that part of the name of one of the parcels of land enumerated in the sasine founded  
on having been written throughout the instrument on erasures, the sasine was not  
sufficient to establish the qualification.

By a crown charter of resignation, dated the 2d, and sealed June 20, 1827.  
the 6th June 1825, in favour of Mrs Rose Innes, there was con- 1ST DIVISION.  
veyed to her, 'hæreditarie et irredimabiliter, totas et integras  
' terras dominicales, et maneriei locum de Netherdale, molen-  
' dinum et terras molendinarias earundem, cum multuris, se-  
' quelis, lie sucken et knaveship, ad easdem spectan. villam et  
' terras de Husbandtown de Netherdale, Craignethertie, Cha-  
' peltown, Millhill, Windyedge, et Coblecroft, cum cymba vec-  
' toria ejusdem, et salmonum piscationibus, &c. omnes jacen. in  
' parochia de Abercharder, nunc vocat. Marnoch, et vicecomi-  
' tatu de Banff, et sicuti dict. terræ nunc sunt divisæ in duas  
' portiones, lie lots consisten. cognitæ et sub nominibus et de-  
' scriptione sequen. appellatæ, viz. Portio prima de Wester  
' Craignethertie, sicuti in præsentî per Joannem Walker posses-  
' sa, Oldtown seu Husbandtown de Netherdale, et parte de Coble-  
' house, per Alexandrum Roberts, Coblehouse, et cymba ejus-  
' dem, per Johannem Courage, Harperhill et Broadgate, et parte  
' de Oldtown de Netherdale, per Alexandrum Sim,' &c.; 'et  
' portio secunda earundem, de prædio et molendino de Nether-  
' dale et Windyedge,' &c. By a clause of dispensation, sasine  
was allowed to be taken, 'ad maneriei locum de Netherdale,  
' maneriei locum de Pittendriech, vel super fundo ullius partis  
' vel portionis dict. terrarum de Netherdale aut Pittendriech,  
' vel supra ulla parte terrarum aliorumque in hac antea dispo-  
' sit. per traditionem terræ, et lapidis fundi earundem tantum.'  
Mrs Innes, on the 9th June, executed a disposition, in favour

June 20, 1827.

of her eldest son, James Rose Innes, of 'all and whole those  
 ' parts and portions of the lands and estate of Netherdale com-  
 ' prehended under the first lot thereof, consisting of, and now  
 ' known by the following names and descriptions, viz. the town  
 ' and lands of Craignethertie, as presently possessed by John  
 ' Walker, the town and lands of Oldtown or Husbandtown of  
 ' Netherdale, and part of Coblehouse, by Andrew Roberts,  
 ' Coblehouse and boat thereof, by John Courage,' &c.; and, as  
 far as related to these lands, assigned to him the unexecuted  
 precept of sasine in the charter. In virtue of that precept, sa-  
 sine was taken in his favour on the same day. The instrument  
 stated, that the parties passed 'ad maneriei locum de Nether-  
 ' dale, virtute clausulæ dispensationis infra mentionatæ,' and  
 that the bailie, holding in his hands a charter of resignation, con-  
 veying to 'Elizabetha Maria Rose Innes de Netherdale, ejusdem  
 ' hæredibus et assignatis quibuscunque, hæreditarie et irredima-  
 ' biliter, (inter alia) totas terras et hæreditatem postea mentio-  
 ' nat. viz. totas et integras terras dominicales, et maneriei lo-  
 ' cum de Netherdale, &c. villam et terras de Husbandtown de  
 ' Netherdale, Craignethertie, &c. omnes jacen. in parochia de  
 ' Abercharder, nunc vocat. Marnoch, et vicecomitatu de Banff,  
 ' et sicuti dictæ terræ nunc sunt divisæ in duas portiones, lie  
 ' lots consisten. cognitæ et sub nominibus et descriptione se-  
 ' quen. appellatæ, viz. portio prima, de Wester Craignethertie,  
 ' sicuti in præsentî per Joannem Walker possessa, Oldtown seu  
 ' Husbandtown de Netherdale, et parte de Coblehouse, per An-  
 ' dream Roberts, Coblehouse, et cymba ejusdem, per Joannem  
 ' Courage, &c.; et portio secunda earundem de prædio et  
 ' molendino de Netherdale et Windyedge, sicuti in præsentî  
 ' possessa per Jacobum Andrew, &c. ac etiam habens et in suis  
 ' manibus tenens, &c. quandam dispositionem et assignationem  
 ' factam et concessam per dictam, &c. per quam dicta Elizabetha  
 ' Maria Rose Innes, propter causas inibi specificatas, dedit,  
 ' alienavit, et disposuit, ad et in favorem dicti Jacobi Rose  
 ' Innes, ejusdem hæredum, &c. totas et integras illas partes  
 ' prædictarum terrarum et hæreditatis de Netherdale, compre-  
 ' hensas sub prima portione, lie lot. earundem consistentes et  
 ' nunc cognitæ et sub nominibus et descriptionibus sequentibus  
 ' agentes, viz. villam et terras de Wester Craignethertie, sicuti  
 ' in præsentî per Johannem Walker possessam, villam et terras  
 ' de Oldtown seu Husbandtown de Netherdale, et parte de  
 ' Coblehouse, per Andream Roberts, Coblehouse, et cymbam  
 ' ejusdem, per Johannem Courage; omnibus jacentibus infra  
 ' dict. parochiam de Abercharder, nunc vocatam Marnoch, et

‘ vicecomitatum de Banff, una cum ullis aliis terris sub quibus- June 20, 1827.  
 ‘ cunque nominibus et descriptionibus eadem agant, quæ com-  
 ‘ prehenduntur et includuntur in dicta prima portione, præ-  
 ‘ dictarum terrarum, et status de Netherdale, in decreto divisi-  
 ‘ onis cumulo æstimati redditus earundem, nuper lato per com-  
 ‘ missionarios subsidii pro dicto vicecomitatu, et quæ dicta pri-  
 ‘ ma portio inibi rata est ad quadringentas et unam libros, sex so-  
 ‘ lidos, et septem denarios, et quatuor duodecimas, monetæ  
 ‘ Scotiæ, aut eo circa, de toto cumulo, de quingentis quadra-  
 ‘ ginta et quinque libris, quatuor solidis, et decem denariis, mo-  
 ‘ netæ Scotiæ, ad quod totæ prædictæ terræ antea ratæ stabant  
 ‘ in dictis libris vectigalis, aut eo circa, cum omni jure,’ &c.  
 The instrument then recited the precept commanding sasine to  
 be given, ‘ secundum formam et tenorem antedictæ cartæ nos-  
 ‘ træ quam de nobis inde habet et dispensationis prædict.’; and  
 proceeded to state, that the bailie, ‘ virtute dictæ cartæ et præ-  
 ‘ cepti sasinæ, et clausulæ dispensationis inibi content. et officii  
 ‘ per idem sibi commissi, dedit, tradidit, pariterque deliveravit,  
 ‘ statum et sasinam, hæreditariam atque possessionem, realem,  
 ‘ actualem, et corporalem, totarum et integrarum illarum par-  
 ‘ tium et portionum de prædictis terris et hæreditate de Nether-  
 ‘ dale, componen. primam portionem, lie lot earundem, et con-  
 ‘ sisten. ex particularibus villis et terris de Wester Craigne-  
 ‘ thertie, Oldtown seu Husbandtown de Netherdale, Coblehouse  
 ‘ et cymba ejusdem, et totis aliis terris comprehensis in ea-  
 ‘ dem, partibus, pendiculis, et pertinentiis, earundem supra, et  
 ‘ in dicta dispositione et assignatione, magis particulariter spe-  
 ‘ cificatis et descriptis, omnibus jacentibus in prædicta parochia,’  
 ‘ &c. et hinc tentis ut specialiter repetitis, brevitatis causa,’ &c.  
 The sasine was described as having been taken ‘ super fundum  
 ‘ dictarum terrarum apud dictum maneriei locum de Netherdale,  
 ‘ virtute clausulæ dispensationis in dicta carta specificat. et con-  
 ‘ tent. modo mentionat. in hoc instrumento,’ &c.; but the clause  
 itself was not engrossed. Throughout the instrument, ‘ house,’  
 part of the name ‘ Coblehouse,’ was written on an erasure.

Founding on these titles, and a certificate of valuation, Mr  
 Innes claimed to be enrolled as a freeholder, at a meeting held  
 on the 29th June 1825, for the election of a representative.  
 Against this claim, Lord Fife objected, ‘ that among other  
 ‘ lands on which the claimant demands enrolment, are the  
 ‘ town and lands of Oldtown or Husbandtown of Netherdale,  
 ‘ and part of Coblehouse, (possessed) by Andrew Roberts, Coble-  
 ‘ house, and boat thereof, by John Courage;’ but from essential  
 ‘ vitiations and erasures in the instrument of sasine produced,

June 20, 1827. ‘ there is no legal evidence that sasine of the said lands of Coblehouse, or any part thereof, has ever been delivered to the claimant, or that he stands at this moment infeft therein. The objection equally strikes against the qualification of the claimant in point of extent of valuation, inasmuch as there is no evidence that, without the said lands of Coblehouse, he is possessed of L.400 Scots of valuation.’\*

Mr Innes answered, ‘ that the erasure or vitiation is not in substantialibus. There can be no dispute that sasine was given of all the lands contained in the conveyance. Further, the charter, and the conveyance, and the instrument of sasine, comprehended generally all the lands, contained in lot first of the estate of Netherdale, as ascertained by the decret of division of the commissioners of supply ; and; therefore, any enumeration of particulars was superfluous ; while that decret proves, at the same time, that the valuation of the lands contained in lot first exceeds L.400 Scots. The charter in favour of Mrs Rose Innes refers to a division of the valued rent of the estate of Netherdale, and it describes particularly certain lands as being comprehended under the first lot, and certain other lands as being comprehended in lot second ; and the disposition by Mrs Rose Innes, after conveying certain lands by name, gives to the claimant all the lands comprehended in lot first, under whatever other name the same may go ; and the sasine is in exact conformity to that general description.’

A majority of the freeholders having sustained the objection, Mr Innes complained to the Court of Session. The Lord Ordinary (to whom the case was remitted for preparation) reported it on Cases ; and thereafter the Court submitted this question to the other Judges :—‘ It being admitted, that the latter part of the word Coblehouse in the sasine is written on an erasure, does this constitute such an objection as to vitiate the sasine, and render it null and void?’ The Judges (Lords Cringletie and Eldin dissenting) were of opinion ‘ that the erasures in the different passages of the sasine in favour of the complainer as to the latter part of the word Coblehouse, vitiate the sasine, and render it null and void.’ Thereon, the

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\* It was likewise objected that the claimant’s disposition gave him right to the ‘ lands of Craignethertie,’ while his sasine applied to the ‘ lands of Wester Craignethertie ;’ and the plea was also maintained, that the sasine was given at the manor-place of Netherdale, in virtue of a clause of dispensation, which was only thus noticed, ‘ virtute clausulæ dispensationis infra mentionat.’ and not afterwards contained in the instrument. But these objections were not considered by the Court to be of weight, and did not enter into the discussion at the bar of the House of Lords.

Court, on the 10th March 1827, 'having resumed consideration of the petition and complaint, with the opinion of the Judges of the Second Division, and the permanent Lord Ordinary, in respect of the erasures in the instrument of sasine founded on by the complainer, dismiss the petition and complaint, and decern; find the complainer liable to the respondent in the statutory penalty of L.30 sterling, and full expenses of process.'\*

The complainer appealed, but no appearance was made for Lord Fife.

*Appellant.*—The erasure is such as to exclude all suspicion of fraud. The instrument was recorded on the very day the sasine was given; and the record agrees with the sasine in description. The deeds referred to in the instruments are identified. The erasures occur in three places: in stating the contents of Mrs Innes' charter of resignation,—of her disposition and assignation to the appellant,—and in the enumeration of the lands in which sasine was given. None of these erasures can be considered as vitiations in substantialibus. As to the two first,—the charter and disposition are admitted to be unchallengeable; but the instrument of sasine merely gives the contents of these deeds; and there are no legal grounds for holding that an error in that recapitulation,—an error that can be instantly corrected by reference to the principal,—must be fatal. As to the third erasure:—it occurs in a passage in the instrument, which passage, without injury to the appellant, might have been omitted altogether. Symbolical delivery was given, 'Totarum et integrarum illarum partium et portionum de prædictis terris et hæreditate de Netherdale componen. primam portionem lie lot earundem.' If the notary had stopped here, this clause would (the instrument narrating also the dispositive clause of the charter, and the conveyance to the appellant 'of all and whole those parts of the aforesaid lands and estate of Netherdale, comprehended under the first lot of the same') have been sufficient to include all the different parcels of land contained in lot first. But the circumstance of the notary having, *ex superabundante*, again entered on an enumeration, was not of such moment as to weaken the previous certification, that sasine had, *de facto*, passed on all; and at all events, it was ad-

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\* See 5 Shaw and Dunlop, No. 285.

June 20, 1827. mitted that sasine was given of lands, (whether Coblehouse or not,) the name of which began with 'Coble.' In short, this instrument narrates most minutely the terms of the crown-charter, specifying the particular lands comprehended in lot I. of the estate of Netherdale; it describes the import of the conveyance, in favour of the appellant, of all the lands contained in that first lot; it distinctly records, that sasine was given to the appellant in them; and it certifies, that everything was done in precise conformity to the warrants. Let the respondent read 'Cobleton,' or 'Coblecroft,' still that would have been held a clerical error, unworthy of observation.

The House of Lords ordered and adjudged, that the appeal be dismissed, and the interlocutor complained of affirmed.

*Appellant's Authorities.*—Boyd, Feb. 23, 1822. (1 Shaw and Ball, No. 395.) Napier, June 25, 1822. (1 Shaw and Ball, No. 571.) Denniston, July 7, 1822. (2 Shaw and Dunlop, No. 164.)

No. 57.

CHARLES CRAIGIE, Appellant.  
J. MILL, Respondent.

*Jurisdiction—Suspension—Statutes 4 Geo. IV. c. 26. and 25 Geo. III. c. 51.—*

A party, who was the owner of a hackney-coach, having been convicted under the above statutes, relative to the post-horse duties, by a Justice of the Peace, and it being provided that any party aggrieved 'shall and may, upon finding security for the penalties and costs, appeal to the Justices of the Peace at the next quarter sessions,' and the party having, instead of so appealing, presented a bill of suspension to the Court of Session, on alleged informalities, and excess of jurisdiction, Held *ex parte* (affirming the judgment of the Court of Session,) that the bill was incompetent.

June 25, 1827.

1ST DIVISION  
Bill Chamber.  
Lord Eldin.

By the 4th of Geo. IV. c. 26, relative to the post-horse duties, it is enacted, that 'every person letting for hire, or using any horse, mare, &c., for drawing any such coaches or other carriages, to be used as hackney-coaches, any distance not exceeding five miles from the general post-office of any city,' &c., shall pay a duty of 5s. per week, if the coach be drawn by two horses. And it is also provided, 'that the person or persons letting for hire, or using any horse, mare, or gelding, for drawing any such coach or carriage, as, or in the nature of, a hackney-coach, shall take out a license expressly authorizing him, her, or them, so to do.' The 25th Geo. III. c. 51, had already enacted, that it 'shall and may be lawful to and for any Jus-