

and subscription manual of party;—it was *replied* be the said Galloway, That it was use and custom of the said Burgh, past memory of man, that all reversion's made in form of instrument made be the common clerk of the town; were as sufficient as any other reversion; whilk reply was admitted be the LORDS, to the said Galloway, Provost.

Fol. Dic. v. 1. p. 204. Maitland, MS. p. 119.

1623. July 10. EDMISTON of Wolmet *against* _____.

IN this action of Edmiston of Wolmet *contra* _____, whereof the title of this pursuit was a sasine of a tenement of land within Leith, which being quarrelled by the defender upon nullity, because it was not registrate in the books of the clerk-register, conform to the act of Parliament in anno 1617;—the LORDS repelled the allegiance, and sustained the sasine, because it was of a tenement within Leith; which albeit it was not within a burgh-royal, and holden burgage, that thereby it might have the privilege of the exception contained in the act of Parliament, which is conceived in favours of burghs-royal; yet in respect of the consuetude and perpetual custom of giving of such sasines by the bailies of Edinburgh, and that never any was in use to be insert in the fore-said register, and of the dangerous consequence whereby many of the subject's right would fall if this nullity should have place; therefore the LORDS sustained the sasine, but nevertheless they declared, that if the excipient would allege that it was, and is, the custom in Leith to registrate sasines in that register, that they would sustain the allegiance.

Clerk, Hay.

Fol. Dic. v. 1. p. 203. Durie, p. 72.

1708. February 7. YOUNG *against* CALDERWOOD.

IN a competition for the rents of a house in Edinburgh, betwixt Sir Thomas Young and Calderwood of Pitteddie, it was objected, that Sir Thomas's sasine was null, because in the resignation made in the magistrates' hands, as the Queen's commissioners, the symbol of surrender is made to be tradition of earth and stone, which is the symbol proper only in sasines, whereas their fixt and known symbol by our stile, past all memory, is by staff and baton; and it is of very dangerous consequence, to change our ancient stiles, especially having no such warrant by the procuratory. *Answered*, It is confessed to be an error and mistake, but which has so generally prevailed, that many others have run into the same error; and to annul them all at one stroke may be very prejudicial to the lieges; for whatever the Lords may do in time coming, yet for

No 20.

taken in the town clerk's hands, the Lords sustained the same, altho' regularly, reversion's cannot be valid, unless subscribed by the party.

No 21.

An erroneous practice by which the magistrates of Edinburgh gave sasine of subjects in Leith, did not annul the sasine; on account of the constant custom, and the danger to many other sasines if the nullity should take place.

No 22.

A sasine by magistrates, with earth and stone, instead of staff and baton, was sustained on account of the custom; but the Lords declared they would hold any such future error to infer nullity.