

No 384.

1628. March 16. ADAMSON *against* The TENANTS of Strathylaw.

AN infeftment of sasine (being only the assertion of a notary) is not sufficient to verify a thirlage, nor will it furnish a man interest to pursue for abstracted multures, unless the charter containing the thirlage be produced, which will be sustained to be proved *cum processu*.

Fol. Dic. v. 2. p. 244. Spottiswood, (MILLS and MULTURES.) p. 206.

No 385.

A sasine *propriis manibus*, bearing to be *intuitu matrimonii*, the marriage having followed, was sustained in a competition with an appriser.
See No 375.

1628. November 22. CLAPPERTON *against* HUME (OF HEATLIE.)

IN an action of removing at the instance of one Clapperton, the compriser of the land, the relict of the husband from whose heir the land was comprised, compearing for her interest, and being admitted, and defending, by virtue of a sasine of the lands given to her by her husband, which sasine bore to be given to her *intuitu matrimonii*; likeas, thereafter they were married, and conform whereunto she was in possession of the land diverse years preceding the warning immediately; this exception, and the said sasine, was sustained, being clad with possession, to exclude the compriser; albeit he replied, that it was a naked sasine, without any adminicle or warrant, for that word bearing, to be given *intuitu matrimonii*, was only *assertio notarii*, which could not have respect against the compriser, who was singular successor, although it might have faith against the giver or granter, and his heirs; and the possession of two years immediately before the warning ought likewise to have no force, being but lately acquired to her by some collusion or consent, either of the tenant or of the heritor, from whom he hath since comprised, there being many years intervening since her husband's decease, who died fourteen years before the comprising, during which whole space she acquired no possession until two late years before his warning, and which possession could not be qualified acquired by her *via jure*, by any legal deed done by her upon her right to recover possession; notwithstanding whereof, this sasine was sustained in this possessory judgment, albeit having no other warrant but the said late possession, and albeit acquired by her without order or process of law, and long after her husband's decease.

Act. *Belshes*.

Alt. ———.

Clerk, *Gibson*.

Fol. Dic. v. 2. p. 245. Durie, p. 399.

* * * Spottiswood reports this case:

MR GEORGE CLAPPERTON being infeft upon a comprising in certain lands of Hardismill, made a warning to the tenants, and desired them to be decerned to remove. Compeared Margaret Heatlie, and produced her sasine of the same

lands *in anno* 1574; and *alleged*, That she was infeft in liferent of the lands, and so had good interest to stay her tenants from being removed. *Replied*, That her sasine could give her no interest, because it was null, being a naked sasine without any adminicle. *Duplied*, That it was relative to a contract of or marriage. *Triplied*, That was only the assertion of a notary, which could not make the sasine subsist, unless she did prove positively, that there was such a contract of marriage. THE LORDS urged the liferenter to allege possession by virtue of that sasine, which she condescended upon thus: That she was in possession by labouring of the ground, or uplifting of the mails and duties diverse years before the pursuer's warning. To this *answered*, Not relevant, unless she would allege possession ever since her husband's decease (which was about twelve years before) or at least before the pursuer's apprising. Yet the LORDS sustained the sasine, as it was fortified with the possession foresaid, she being *in possessorio*.

No 385.

Spottiswood, (REMOVING.) p. 285.

1628. November 22.

GOODLET against ADAMSON.

A SENTENCE and ward of court of a royal burgh, whereby a man was recognised, by testimony of witnesses, to be eldest son and heir to the defunct, upon which his procurator took instruments, was found not to prove him to be heir, unless sasine had followed upon the said act.

No 386.

Fol. Dic. v. 2. p. 246. Durie. Spottiswood.

*** This case is No 82. p. 9737, *voce* PASSIVE TITLE.

1629. March 7.

YEOMAN against STUART.

A SASINE of an annualrent of L. 20 to be taken out of a tenement in Dundee granted to the pursuer by the Bailies of Dundee by hasp and staple, as heir to his father, who was infeft therein upon his author's resignation, mentioned in his said father's sasine, propositing the said resignation; likeas, his said father's author's sasine purported to be given by the heritor of the land to the said author of the said annualrent, to be taken out of the said land, there being no other adminicle, neither of the first sasine, nor none of the subsequent sasines, but the assertion of the notary to the sasine, who was town-clerk; and there being no other preceding writ for the warrant thereof, nor no possession had of the said annualrent at any time since the first sasine, which was dated and given 38 years since, the sasine foresaid given to the pursuer by hasp and staple, with the other sasines preceding, as said is, was sustained to produce action at the pursuer's instance, (albeit he was not retoured heir in the said an-

No 387.

A sasine by hasp and staple granted to an heir of the creditor in an infeftment of an annualrent, was found a sufficient title to insist in a pointing of the ground.