

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.

No 387. nualrent to his father; and albeit there was neither preceding adminicle to the sasine, nor yet any possession since the date thereof; and albeit it was only testified by the clerk's assertion, notary thereto) for pointing of the land, both for bygones and times to come, seeing the same was given by the Bailie and town-clerk, according to the usual form within burgh in such cases; which was sustained, albeit the sasine of the said annualrent bore not to be given to hold burgage; and which the defender alleged ought not to be respected as in other sasines of lands held burgage, where the assertion of the Bailie and town-clerk, testified by the clerk's instrument, is sufficient; which was repelled, and the sasine sustained.

Act. *Fletcher.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. 2. p. 246. Durie, p. 437.*

No 388. 1629. July 16.

SCOT *against* DEANS.

A SASINE of a house in the town of Hawick, found a good active title in a process, though granted only by the Bailie of the burgh, notwithstanding it is only a burgh of barony, and that it is the peculiar privilege (as was pleaded) of royal burghs, holding burgage, to have sasine granted by their Bailies; but here it is observed, that the superior concurred with the pursuer; but if he had granted a precept of *clare constat*, it would have been a more unexceptionable evidence.

*Fol. Dic. v. 2. p. 246. Durie.** * This case is No 20. p. 6899, *voce* INFERTMENT.

1629. July .

WILSON *against* STUART.

No 389.

A sasine of burgage lands to a man as heir to his father, was found sufficient to instruct him heir with regard to a process of wardance pursued by him.

ONE Wilson, as heir to his father, pursuing one Stuart to warrant a tenement in Glasgow, disposed by the said Stuart to his said father. It was found, That the pursuer's sasine produced to instruct him heir, being given by the Bailies of Glasgow, by hasp and staple, cognoscing him to be heir, was sufficient to instruct him heir, and to produce this action, albeit he was not heir served and retoured, the same being within burgh, and the pursuer being convened as heir, to pay to this defender the price of the land annailzied, in another process pursued against him, as heir *passive* of before; for it was found, that this party could not oppone, nor quarrel the right whereof she was author herself to the pursuer's father, and for which she convened the pursuer as heir, and so the sasine was sustained; but it might have been more doubted, if this sasine would have produced action against any third person, or any stranger pretending right to the land, albeit it will ever produce action against the tenants of