

1628. December 16. LA. BORTHWICK *against* SCOT of GOLDLANDS.

No. 6.

In a removing, the pursuer's sasine being of lands lying discontinuous, and being relative to a charter granted by the Bishop of St. Andrew's, whereby he had united all these lands in one tenement, which was the warrant of the sasine, the sasine was not sustained, seeing none could unite the lands but the King, and no subject could make an union except the King had confirmed it, or had originally given the same; and this was so found, albeit the defender, who opposed it, alleged no right in his own person.

*Durie, p. 410.*

\* \* See No. 44. p. 914.

1630. January 19. BRUCE *against* WARDLAW.

No. 7.

In the action of double-poining between Mr. Robert Bruce, Bailie-depute of Torrie, constituted by my Lord Lindsay, and James Wardlaw, my Lord Lindsay's sasine of the Bailiery was quarrelled as null, in so far as it might be extended to the lands of Torrie, because sasine was not taken upon the ground thereof, but at the cross of St. Andrew's, by virtue of an union granted by the Bishop, who could not give it, nor any subject, unless it had been confirmed by the King. The Lords found, That there was a great difference in lands that lie divided, and in an office and jurisdiction which is indivisible, and therefore sustained the sasine. Some were of opinion, that there was no necessity of a sasine in an heritable office, but a naked constitution by writ was sufficient.

*Spottiswood, p. 23.*

\* \* This case is reported by Auchinleck:

My Lord Lindsay's sasine of the regality of St. Andrew's by North Forth, taken at the cross of St. Andrew's, was alleged null, because the Bishop, granter of the infeftment, had no power to make an union, or give power to take sasine at a certain place for all his regality, in which there are divers baronies lying discontinuous. To which it was answered, That although no subject, but the King, can make an union of land, yet the office of Bailiery being *quid inseparabile*, may be taken by a sasine at any part appointed by the Bishop: Which the Lords sustained.

*Auchinleck MS. p. 211.*

1630. November 16. L. CLACKMANAN *against* ALLARDES.

No. 8.

In a poining of the ground of the lands and barony of Balnamoon, for an annual-rent, which was disposed to Clackmanan by Balnamoon, to be uplifted out

Manner in which union is constituted, and its effects.

No. 8. of the lands and barony of Balnamoon, or any part thereof, conform to his charter and contract, of this tenor, and sasine thereon, which sasine bearing, in the clause *acta erant*, to be done *super fundo dictarum terrarum*, the defender being a creditor to Balnamoon, and who had comprised certain particular lands from him, after the pursuer's infestment foresaid, the said defender alleged, that the said sasine could not extend to these lands, which were not specially affected with the pursuer's annual-rent, these lands not being specially inserted in the pursuer's charter or sasine, nor any sasine taken at these lands, but only making mention, "that the disposition was out of the lands of Balnamoon," whereby no other lands could be affected; and albeit it was called the barony of Balnamoon, yet that designation could not make the same a barony; for although that, before the pursuer's right, the pursuer's author had acquired the lands from another, by a base right, bearing, "to be holden in free barony, and that the King had confirmed that charter," yet that confirmation could not make the same a barony, seeing a barony cannot be granted after such manner, but by a specific erection and creation, done by the Prince *scienter*, when that is intended by him, and cannot be done by a subject, to take beginning from his deed, as in this case; and albeit it were a barony, yet he alleged it cannot extend to these lands excepted on, they not being specially disposed, nor any sasine taken thereon, except that the lands, by the King's charter, had been so united, that that place had been appointed to be the place whereat sasine should have been taken for all the lands: Notwithstanding of the which allegiance, the action was sustained, and the exception repelled, and the charter and sasine of the annual-rent libelled was found to affect all the lands contained in that charter, confirmed by the King, bearing to be holden *in libera baronia*, which lands lay contiguous together, but not to affect those which lay discontinuous; and found, seeing there was no special place designed whereat sasine should be taken, that, for these lands lying contiguous, sasine taken at any of them served to affect all the lands lying contiguous, and ought so to be found in all lands of any barony: Likeas, many of the Lords thought the same ought to hold in sundry tenements also, albeit not united in a barony; that where they lay contiguous, sasine taken of one of the lands should stand to the heritor for sasine of the rest;—which I think hard to allow, (but it was not the proper case then disputed), and specially here, where the sasine was not of land, but of an annual-rent out of the land: And the Lords found, That the charter granted by the vassal to his son of lands, which pertained to him as an half heritor of the barony, for the land of the whole barony of Menmuir, pertained to Balnamoon, and some other heritors, and Balnamoon had the half thereof, the lands of which half he disposed, as said is, to his son, by a base right, to be holden *in libera baronia*, and which charter was confirmed by the King, which confirmation here in this place was found to be equivalent to the erection of a barony, and dismembering it from the other whole barony, as if it had been particularly done by the King.

Act. *Advocatus & Mowat.*

Alt. *Stuart & Burnet.*

Clerk, *Hay.*

*Durie, p. 538.*