

No 391.

sioner, and having power for that effect by the Earl of Abercorn his brother ; and the defender *alleging*, That no process should be granted on that sasine so proporting, while the warrant thereof were produced, seeing it was but the assertion of a notary, which ought not to have faith uninstructed, no more than if any stranger, not having right, had given such a precept ; and the pursuer *replying*, That this sasine was sufficient, without further production against this defender, who was a naked tenant, having no right at all ;—the LORDS found no process, while the precept and commission whereto the sasine was relative, were produced.

Clerk, *Gibson*.*Fol. Dic. v. 2. p. 244. Durie, p. 615.*

No 392.

A sasine *propriis manibus* by a husband, bearing to be in implement of a contract of marriage, was sustained as a title for mails and duties, if the contract should be produced *cum processu*.

1632. *January 27.* LA. MONTQUHANIE *against* COMMISSARY OF ST ANDREWS.

The Lady pursues the Commissary for payment of the duties of the lands wherein she was infest, and which were uplifted by him diverse years since her husband's decease, wherein she produced only for her title her sasine, bearing to be given conform to her contract of marriage ; against which the Commissary, who was infest by a public infestment proceeding on a comprising from her umquhile husband, *alleged*, That the same wanted an adminicle, and being only *assertio notarii*, that it proceeded on her contract of marriage, could not be a title to sustain this pursuit against him, except the warrant thereof were produced. THE LORDS took the pursuer's oath, if the contract were in her hands, which she declared she had not ; and in respect thereof, the LORDS found no necessity to produce the contract nor the adminicle of the sasine presently, but sustained the sasine for a title in this pursuit, and ordained the pursuer to prove her reply *cum processu*, that there was such a contract as the sasine proported, which was the warrant of the sasine, which the LORDS admitted to be proved, and that the process ought no in the mean time to delay while that were proved, but ordained the cause to proceed.

Act. *Nicolson & Picairn.*Alt. *Stuart & Learmont.*Clerk, *Scot.**Fol. Dic. v. 2. p. 245. Durie, p. 615.*

No 393.

A sasine was granted to a wife *propriis manibus* for mere love and favour. A reduction was not sustained unless upon showing, that the wife was otherwise sufficiently provided for.

1639. *March 15.* HAMILTON *against* RELICT OF HAMILTON.

MR JOHN HAMILTON having right to a comprising of lands pertaining to umquhile Mr James Hamilton, deduced for his debt, pursues the relict of the said umquhile Mr James, for reducing of a sasine of some of the said lands comprised, granted to her by her umquhile husband, upon this reason, that the sasine was granted by the husband to his wife *propriis manibus*, only for mere love and favour, there being no other adminicle nor impelling cause for war-

rant thereof, and therefore ought not to be sustained to prejudge a true creditor who hath comprised, and is infest; but the creditor ought to be preferred to the right of the said land, notwithstanding of the said infestment granted to the wife. In this process, the defender being absent, and the pursuer producing the defender's sasine, extracted out of the notary's prothocol, which being conferred with the debt, whereupon the comprising was deduced, the LORDS found the reason relevant and proved by the said sasine, being of the tenor foresaid, and none compearing to show any other adminicle or warrant for sustaining thereof; notwithstanding that the debts for which the comprising was deduced, were of a posterior date to the wife's sasine quarrelled; but the LORDS found it requisite to the pursuer to prove further with this reason, that the wife, the defender, was otherwise sufficiently provided to some reasonable proportion of her husband's lands, whereby she might competently live, by and attour the lands contained in this sasine quarrelled.

No 393.

Act. *Præsent.*Alt. *Johnston.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 245. Durie, p. 884.*

1664. December 20. GEORGE NORVAL Advocate against MARGARET HUNTER.

No 394.

A sasine is no presumptive proof of its supposed warrant.

MR GEORGE NORVAL pursuing for mails and duties upon an apprising. Compearance is made for Margaret Hunter, who *alleged* absolutor, because she was infest in liferent before Mr George's right; which being found relevant for instructing thereof, she produced her sasine;

Which the LORDS found not to instruct without an adminicle, and therefore sustained the decret.

The said Margaret raised reduction of this decret on this reason, That now she produced an adminicle, viz. her contract of marriage; *2dly*, That the decret is null, because the quantities are not proved. The charger *answered* to the first, That the Lords having found the exception not proved, the pursuer could not be admitted in the second instance against a decret *in foro*, upon production of that which she should have produced at first. As to the second, he needed not prove the quantities; seeing her exception was total without denying the quantities.

THE LORDS found the decret valid, but ordained some of their number to deal with Mr George, to show favour to the poor woman. (The next case is the sequel of this.)

*Fol. Dic. v. 2. p. 244. Stair, v. 1. p. 244.*

1665. June 29. MR GEORGE NORVAL against MARGARET HUNTER.

No 395.

A contract of marriage found sufficient to sup-

MR GEORGE NORVAL having appraised certain lands, pursued for mails and duties against Margaret Hunter possessor, she compeared and proponed a de-