

1668. *January 4.* FORBES *against* ———.

No 27.

THE author's backbond found good against the singular successor in a tack, though neither registered nor intimated to him before his purchase.

Fol. Dic. v. 2. p. 330. Stair.

* * * This case is No 37. p. 10204., *voce* PERSONAL and REAL.

* * * The like, with regard to a backbond of trust, 12th July 1670, Kennedy against Cuninghame, No 39. p. 10205., *IBIDEM.*

1668. *June 30.* MR ROBERT BURNET *against* SWAN.

No 28.

A sasine within burgh under the clerk's hands sustained without necessity to allege that it was registered in the town's books.

MR ROBERT BURNET, tutor of Leyes, pursues for mails and duties of a tenement in Aberdeen. It was *alleged* for Swan the defender, Absolvitor, because he stands infeft in the lands, and by virtue of his infeftment, in possession; and albeit the pursuer's infeftment be prior, it is null, neither being registered in the register of sasines, nor in the town clerk's books of Aberdeen, according to the custom of all burghs, but hath been latent many years, and no vestige of it in the town's books; so that the defender was *in bona fide*, to contract with the common author, and apprise thereafter. It was *answered*, That the act of Parliament excepted sasines within burgh; and the pursuer having the town clerk's subscription was not answerable for his keeping a prothocol or record.

"Which the LORDS found relevant, and sustained the sasine."

1676. *February 24.*—IN a competition betwixt James Swan and Robert Burnet, it being *alleged* that a sasine of a tenement in Aberdeen was null, neither being registrated in the register of the shire, nor in the town books, it was *answered*, That the sasine being under the town clerk's hand was sufficient, because the act of Parliament anent registration of sasines excepteth sasines within burgh, without any provision that they be booked in the town's books.

THE LORDS sustained the sasines. See No 5. p. 13538.

Fol. Dic. v. 2. p. 330. Stair, v. 1. p. 547. v. 2. p. 421.

* * * Dirleton reports this case:

1676. *February 24.*—A SASINE within burgh being questioned, because it was not found in the books, was sustained; in respect of the act of Parliament, excepting such sasines from necessity of registration, it being to be presumed

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that the clerks do not fail to registrate the same, and if they do not book them, it ought to be imputed to them, and not to the party. *In presentia.* No 28.

For the Sasine, *Sir David Falconer.* Alt. *Seaton.* Clerk, *Hay.*
Dirleton, No 348. p. 166.

* * * See Thomson against M^r Kittrick, No 12. p. 6892, *voce* INFEMENT.

1672. November 29. MAXTON against CUNINGHAM.

No 29.

CERTAIN tenements in Edinburgh being apprised from John Ker, first by William Cuninghame, and thereafter by Sarah Maxton; in the competition betwixt them, it was *alleged* by Maxton, That she ought to be preferred, because her apprising was allowed conform to the act of Parliament, and Cuninghame's apprising (though prior) was not allowed, and so null. It was *answered*. That the not allowance does not infer a nullity, but only hinders the preference of the first apprising to a posterior apprising first allowed; so that all that can be thence concluded is, that neither apprising should be preferred, but that both should come in *pari passu*.

THE LORDS found both the apprisings to come in *pari passu*.

Stair, v. 2. p. 123.

* * * See 17th July 1668, Stewart against Murray, No 80. p. 8384.,
voce LITIGIOUS.

1673. June 12. FAA against LD. POWRIE.

No 30.

A SUPERIOR's sasine, though not registered, was found a good title in a declarator of non-entry against the vassal, who did pretend no right to the superiority.

Eol. Dic. v. 2. p. 331. Stair.

* * * This case is No 25. p. 9307, *voce* NONENTRY.

* * * Such a sasine was sustained as an active title in a reduction and improbation, 14th November 1678, Dalmahoy against Ainslie,
No 8. p. 5170., *voce* GROUNDS and WARRANTS.

1675. July 20. DUNIPAGE against OLIVESTOE.

THERE being certain lands given in wadset by the heritor, and the reversion contained in the right of wadset, which wadset was thereafter denounced, and

No 31.
A private discharge of a renoucia-