

No 399.

pretended custom of a burgh-royal could be sufficient to take away an heritable right of land ; and they did likewise repel the answer founded upon the revocation, seeing as it did acknowledge a disposition, so it was with that quality that she was forced thereto, which they found could not be divided, and that the pursuer had no necessity to prove the force ; and so the reduction was sustained, unless the defender would prove homologation of the right and disposition by some other deeds, which were sufficient to infer the same.

*Gosford, MS. No 491. p. 258.*

1681. February 11.

IRVING against CORSEN.

No 400.

A sasine of a tenement, within burgh, by a father to his son, for love and favour, bearing registration by the father in a Bailie's hands, was found not to instruct, without a warrant.

FRANCIS IRVING pursues reduction and improbation of the rights of some tenements in Dumfries against John Corssen, who having produced a sasine, out of the Town-books, under the present Clerk's hands, bearing, that the defender's father having in implement of a disposition, whereby he disposed these tenements to the defender, and his heirs male, and for love and favour, *propriis manibus*, resigned them in the Bailies' hands, for new infestment to the defender his son, and that accordingly the Bailie gave sasine. The pursuer *alleged*, No respect ought to be had to this sasine, because it is no principal sasine, under the hand of the Town-clerk, notary thereto, but is only a double under the hand of the present Town-clerk, out of the Town's books, which have not registers capable of extracts, but a notary's prothocol, and therefore at least the sasine should have been transumed upon production of the Town's books ; *2do*, This sasine can import no right, being *assertio notarii* without warrant or adminicle. It was *answered*, That the books of burghs-royal are in place of registers of sasines within burghs, and more authentic than a prothocol of a private notary, and it would be a greater inconvenience to bring out books upon all occasions for transuming sasines ; neither need such sasines to have adminicles, being within burghs, not given by Bailies in that part, but by the Bailies within burgh, and by the Town-clerk, especially in this case, where it is a sasine given by a father to a son, for love and favour.

THE LORDS found the sasine not sufficient to instruct the right without a warrant or adminicles, and found that an extract out of the Town's books could not supply a principal sasine upon the attest of the Town-clerk, who was notary thereto, but granted cemmision to compare the sasine produced with the Town's book, and found the report of the commission, bearing, this extract to be conform, sufficient for a principal sasine.

*Fol. Dic. v. 2. p. 246. Stair, v. 2. p. 859.*