

SECT. II.

Symbol in Resignations.

1729. *December 2.*CARNEGY *against* CREDITORS of CRUIKSHANKS.

No. 8.

A SASINE within burgh, upon a resignation anno 1718, carrying the symbols of earth and stone, was found null upon the act of sederunt, 11th February, 1708, declaring "staff and baston the only symbols to be used in resignations," though the old custom had been long continued in the town of Aberdeen, where that sasine was granted. See APPENDIX.

*Fol. Dic. v. 2. p. 362.*1742. *June 25.*EARL of ABERDEEN *against* WILLIAM DUNCAN.

No. 9.

A resignation made by any other symbol than staff and baston, is void.

IN the mails and duties at the Earl's instance, for the rents of certain tenements in Aberdeen, which originally pertained to John Anderson, common author to both parties, compeared William Duncan, who had purchased an annual right on the said tenements, and craved to be preferred on his prior infestment.

Objected: The title under which Duncan claims a preference, is void, in so far as the resignation in the hands of the magistrates of Aberdeen was not made by the usual and customary symbols allowed of by the law and practice of this kingdom.

Answered: By the nature of the thing itself, nothing is more indifferent than what shall be the symbol used in a resignation: If the form of resignation be actually adhibited upon a proper warrant, and thereupon a new investiture given to the purchaser, and the sasine recorded, every thing is done material for constituting the right, and publishing the same to the lieges. The symbol used in this case, of a penny *utole*, has been very ancient, and so common in tha tburgh, that allt he resignations since the year 1708, (except 16) have been made by that symbol, as appears from a certificate of the town-clerk's. The act of sederunt 1708, which discharges the using any other symbols in resignations except staff and baston, respects only resignations of lands, and not annual rent rights. See Craig, Tit. *De resig.* § 8.

Replied: That it surely was originally matter of indifference what symbols the law enjoined to be used, such things being, in their own nature, quite arbitrary; but when once ascertained by law or practice, it becomes matter of consequence, that the same should not be variable. Therefore it is, that the law has ascertained the