

No 14. because not recorded in the books of the shire, or general register, but in the Town-clerk's books, which are only a proper register of sasines, given to be holden burgage upon resignation in the Bailie's hands, as representing the community.

Answered for Bessey Bennet, The act of Parliament, in King James VI.'s time, dischargeth private infestments to be given by any other than the Bailies and Clerks of the burgh, as being a casualty due to them; who cannot complain for being deprived thereof, when they voluntarily give sasine upon the granter's precept. The decision, 15th December, 1629, relating only to the tinsel of superiority, hath no contingency with the point. *2do*, It is ridiculous to assert, that any infestment within burgh, whether base or not, should be registered in the shire, and not in the town books. *3tio*, Whatever might be pretended for transmitting the property of burgage tenements by public resignation, nothing could hinder a servitude upon these to pass by a base infestment; especially considering that this is only a temporary right of liferent provision, and the precept of sasine was executed by the Bailie and the Clerk, and recorded in the town Court books, in the terms of the act of Parliament.

THE LORDS sustained the infestment in favour of Bessey Bennet.

Fol. Dic. v. 1. p. 470. Forbes, p. 517.

1740. July 3.

MARQUIS OF TWEEDDALE *against* The TOWN of MUSSELBURGH.

No 15.

It was laid down, as a proposition certain in law, though there was no occasion to give a direct judgment upon it, that an original charter, erecting a burgh, requires no sasine, because there is no person in being at the time who can receive it.

Fol. Dic. v. 3. p. 317. Kilkerran, (SASINE.) No. 1. p. 503.

SECT. IV.

Method of obtaining Infestment by an Heir.

No 16.

HOME of Renton *against* JOHN STUART.

A SUPERIOR being charged to enter one to his predecessor's lands; if he, after the charge, denude himself, the letters, notwithstanding, will be found orderly