

1631. February 18. LORD CRANSTON *against* SCOT.

THIS cause is mentioned the 16th of February 1631, No 60. p. 3661., *voce* ESCHEAT; and Andrew Scot, the compriser, now *alleging*, that the rebel, whose liferent was sought, nor his father, was never vassal to the Lord Cranston, (for he bruiked, by virtue of a contract, the right whereof he had comprised,) and the pursuer offering him to prove, that the rebel, or his father, had accepted a charter from him, whereupon also sasine had followed; the compriser *duplied*, that the reply was not relevant, except he would say, that he was validly and lawfully seased in the said lands; for if the sasine was null, (as indeed if any sasine was taken upon that charter, the same was null, for it was not registered conform to the act of Parliament, and had diverse other nullities therein,) whereby their being no sasine, or only a null sasine, which was alike, as if there had been no sasine, there could be no holding; and, consequently, the superior could claim no liferent by the annual rebellion of the vassal. THE LORDS repelled this allegiance, and found, that the sasine taken by the vassal, albeit it had nullities, or defects in law, especially where they flowed from the fact of the person's self who was seased, yet that notwithstanding the same was so null, that the superior was not thereby prejudged of his casualty of liferent; for he being vassal to the superior, thereby also the casualty fell to him; neither was this allegiance found the more relevant, as being proponed by a compriser, who alleged, that he had comprised the rebel's contract of alienation of the lands made betwixt him and the Lord Cranston, by virtue of the right whereof he might bruik against the granter, as he did, and by the which right no liferent could fall to the Lord Cranston, albeit he was rebel; but the king would have right thereto, if any liferent fell. And so he *alleged*, that he, as compriser, might competently propone the nullity of that sasine, which was repelled. See PERSONAL OBJECTION. REGISTRATION.

*Fol. Dic. v. 1. p. 518. Durie, p. 571.*

1637. February 27. LOCKHART *against* SIMPSON.

By contract of marriage betwixt umquhile Helen Johnston and Laurence Simpson, her son, taking burden for Margaret Simpson, daughter to the said Helen, and sister to the said Laurence, on the one part, and Archibald Hamilton on the other part, the said Helen and Laurence are bound to pay 2000 merks to the said Archibald in tocher good; to which sum, Jean Hamilton, only daughter of that marriage, having made Steven Lockhart assignee, with consent of the said Archibald, her father, which assignation is subscribed by he father, and consented to by him; whereupon, the assignee pursuing the

No 30.

In a declaration of a liferent escheat, it was found *jus tertii* to the rebel vassal to plead that his sasine was null, because even although the sasine were reduced, he could derive no benefit re- from the duction, for his liferent escheat would then fall to the Crown instead of the superior.

No 31.

An assignation to a bond was executed by a person who had no right to it, but the creditor subscribed the assignation as consenter. The Lords found it was *jus tertii* to