

for yearly payment of the said victual during his mother's lifetime. This sasine was found a sufficient title, notwithstanding it was *alleged*, That it not being subscribed by Galrigs, it was only *assertio notarii*, without any adminicle, the first infestment upon the contract of marriage being renounced, and the renunciation bearing nothing of these lands that came in place thereof; yet the LORDS found, that in respect of the marriage and renunciation of her former provision, the sasine should be sustained; but discharged the extracting of the sentence until the notary and witnesses insert be all examined upon oath, upon the verity of the sasine.

Gosford, MS. p. 1.

No 396.

1669. February 11.

BUCHAN against TAITs.

IN ANNO 1623, George Tait of Pirn gave a saisin *propriis manibus* to George Tait his eldest son, and a bond of that same date, bearing that he had given sasine, and obliging him to warrant the same, reserving his own liferent. Thereafter *in anno* 1640, he contracts in marriage with Janet Buchan, and for 2500 merks of tocher, obliges him to infest her in the same lands of Pirn, wherein his son was infest, whereupon she now pursues a reduction of George Tait younger's infestment against his daughters, upon these reasons; *1mo*, That the sasine *propriis manibus*, was only the assertion of a notary without a warrant; *2do*, That the sasine had not four witnesses; *3tio*, That this was a clandestine latent right, most fraudulent betwixt a father and his apparent heir, never having been published, or taken effect by any possession, and cannot prejudice this pursuer, who is a most privileged creditor, and brought a competent tocher with her; *4to*, That this being an infestment by a father to his apparent heir, then in his family, it was but as the *legitim* of children, which is still ambulatory at their parents' disposal, and so must be affected with this posterior burden of the father's marriage. It was *answered* to the *first*, That the bond of the same date with the sasine, acknowledging the same, is a sufficient adminicle, and is equivalent, as if the father had subscribed the sasine; To the *second*, There is no law requiring four witnesses to a sasine, for that act of Parliament is only where a party subscribes by a notary, but relates not to notary's instruments subscribed by themselves, upon warrants, or adminicles, without which they are not valid with forty witnesses, and without which two witnesses are sufficient; To the *third*, This infestment is no ways fraudulent, or latent, seeing it is registrated in the register of sasines, and reserves the father's liferent, whose possession is the son's possession, and cannot be prejudged by a deed so long posterior thereto; To the *last*, Infestments taken to children by parents being registered by parents, can never be recalled.

THE LORDS assoilzied from all the reasons of reduction, and sustained the defender's sasine.

Fol. Dic. v. 2. p. 244. Stair, v. 1. p. 602.

No 397.

A sasine given by a father to his son *propriis manibus* sustained, being registered *debito tempore*, and accompanied with adminicles.

No 297.

\*\*\* Gosford reports this case :

IN a reduction pursued at the instance of Janet Buchan and her daughters, as heirs of the second marriage, procreated betwixt her and George Tait of Pirn, against the children of George Tait younger, eldest son of the first marriage, for reducing his infeftment made to him by his father *in anno* 1623, upon this ground, that it was a latent clandestine deed, and being only a sasine *propriis manibus*, without any charter or precept, and notwithstanding whereof the disponee had remained still in possession till the year 1640, at which time, by contract of marriage with the said Janet, he did provide her in liferent to a part of these lands disponed to his eldest son, and her children in fee, which they contended ought to be valid, it being in the power of the father to revoke the foresaid right given to his son, who was *in familia* ;—the LORDS, notwithstanding, did sustain the eldest son's right, and the sasine given *propriis manibus*, seeing it was registrated, within sixty days, in the public register, and that the father at that time had given a bond to warrant the infeftment, and to grant charters and precepts, which they found a sufficient adminicle, albeit it was but a personal right; specially seeing the Town of Peebles, who was superior of that part of the lands disponed to the pursuers, had confirmed the same.

Gosford, MS. No 112. p. 41.

No 398.

1672. January 17. YOUNG against THOMSON.

A SASINE bearing to be given by the superior *propriis manibus*, was sustained, the procuratory of resignation produced being found a sufficient adminicle to support the notary's assertion.

Fol Dic. v. 2. p. 244.

\*\*\* This case is No 381. p. 11207., voce PRESCRIPTION.

No 399.

1672. June 21 MITCHEL against COWIE.

A sasine granted by Bailies to a singular successor, bearing to be upon resignation, was found not to defend against reduction, without producing the disposition.

MARGARET LIDDEL having been married upon Mr William Johnstoun, and being heretrix of certain tenements in Aberdeen, in June 1628; there is a sasine given by the Bailies of Aberdeen, in favours of her two sisters, upon her resignations; and *in anno* 1633, another sasine upon the resignation of these sisters, in favours of the said Mr William Johnstoun and Margaret Liddel in conjunct fee, and the heirs between them, which failing, his heirs; William Mitchel, as heir to the said Margaret Liddel, having pursued reduction and improbation against Cowie and others, who now have right to the tenements, and having obtained certification against all original rights granted by the said