

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 Mitcheh, 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

Margaret Liddel, except the said sasine, insists now upon this reason of reduction, That there being no disposition, charter, nor precept, for denuding Margaret Liddel, the sasine is but *assertio notarii*, without warrant, and so is null, and all the defender's rights depending thereupon fall in consequence. It was *answered, 1mo*, That the original sasine is a valid right, because though after so long a time, the warrant thereof is not produced, yet it is sufficiently adminiculated by the sasine, in favours of Margaret Liddel, bearing her to be personally present, and accepting a liferent right from her sisters, which clearly imports that they had right; *2do*, Though the assertion of an ordinary notary be not sufficient, yet the sasine of a Town-clerk, which remains in record in the Town books, and much more two such sasines, *ex intervallo*, are sufficient; *3tio*, There is produced by the pursuer a revocation of the infeftment granted by her to her sisters, and the disposition whereupon it proceeded, upon that ground, that the same was extorted by her husband by force, which clearly acknowledgés that such a disposition was; *4to*, It is offered to be proved, that it is the common custom of this burgh, that infeftments pass upon resignation, without any warrant; and this pursuer having lain so long silent, the Bailie, Town-clerk, and witnesses in the sasines are all dead, whose oaths would have adminiculated the same, if they were alive.

THE LORDS repelled all these defences, and found that the original right being only a sasine by Margaret Liddel was null, and was not adminiculated by the sasine in her favours, which *laborabat eodem vitio*, having no warrant for that adminicle, both being but the assertions of the Town-clerk; and found that the revocation, albeit it mentioned a disposition, yet that the intent thereof being only to revoke the particulars exprest, was but style, and that the sasine did not relate to a disposition, but *secundam chartam confectam*; so that certifications being obtained against both dispositions and charters, the said revocation was found no adminicle, nor was the custom of the burgh found relevant.

Fol. Dic. v. 2. p. 246. Stair, v. 2. p. 87.

* * * Gosford reports this case :

IN a reduction at Cowie's instance, as heir to one Margaret Mitchel, of a disposition of a tenement of land in Aberdeen, alleged made by her, and infeftment following thereupon, wherein for satisfying the production there being only produced a sasine under the Town-clerk's hand, bearing that it was upon resignation in the hands of the Bailie, and therefore craved to be reduced, as being without a warrant; it was *answered*, That it was offered to be proved, that by the custom of Aberdeen such infeftments were valid without any other warrant; *2do*, They did produce an extract of a revocation made judicially, bearing that the said Margaret did acknowledge that she had disposed the said tenement during her marriage, and did bear likewise that she did it for fear of her life, being threatened. THE LORDS did repel the *first* answer, and found that no such

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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.