

1678. *November 26.*LORD CARDROSS *against* SIR JOHN FOWLIS, Keeper of the General Register of Sasines.

No 34.

THE LORDS refused, on a bill, to allow the Keeper to put in Cardross' sasine of my Lord Kincardine's estate, before those which are booked already; but ordained him to raise a summons for that effect, and to call thereto all creditors that have got posterior infestments, to hear and see his sasine registered of the date it was given in.

Fol. Dic. v. 2. p. 332. Fountainhall, MS.

1681. *January 6.* BRUCE *against* HEPBURN.

No 35.

A discharge of a clause in a bond, whereby a sum was lent by a father, and taken to the son in fee, with power to the father, during his lifetime, to dispo-
ne, and on which bond, infestment followed, was found not to require registration.

MARY BRUCE being provided to a sum due by a bond granted by Sir James Keith, to umquhile Dugald M'Pherson and his Spouse in-liferent, and to John M'Pherson their son in fee, containing a clause with power to Dugald to uplift and dispose of the sum during his life, at his pleasure; upon this bond there was infestment of annualrent; and Mary Bruce, relict of John M'Pherson, pursuing thereupon, compearance was made for Patrick Hepburn, who produced a disposition of this right from Dugald M'Pherson, and craved preference in respect of the clause in the bond, whereby Dugald had power to dispo-
ne. It was *answered*, That there is a discharge produced by Dugald in favours of John his son of that clause prior to Patrick's disposition. It was *replied*, *Non relevat*, unless the discharge had been registrated in the register of sasines and reversions, for this clause being an infestment, it could be no otherways evacuated against singular successors, but by registration in the register of sasines. It was *duplicated*, That the act of Parliament for registration of sasines and reversions, is only extended to bonds for reversions and discharges thereof, and assignments thereto; but this is only a personal provision, therefore it may be discharged effectually, without registration; likeas it was registrated in the ordinary register, and was granted before Mary Bruce was married to M'Pherson.

THE LORDS sustained the discharge, and found no necessity of registration thereof.

Fol. Dic. v. 2. p. 330. Stair, v. 2. p. 826.

* * * Fountainhall reports other particulars of this case:

1681. *February 10.*—DOUGAL M'PHERSON dispensed the fee of his estate to his son, with a faculty to alter. Thereafter he dispo-
nes these lands to Black-Castle for onerous causes; upon which Patrick seeks reduction of the son's right. *Alleged, imo*, He had a discharge of the faculty from his father before.

Patrick's disposition. THE LORDS inclined to find this discharge null and fraudulent, as *inter conjunctissimas personas*, on the act 1621. *2do*, *Alleged*, Dougal the father had not exerted his reserved faculty, and so the son's right stood unrevoked. *Answered*, It was tacitly altered by the father, in so far as he had disposed all right he had to the said lands. *Replied*, He had not mentioned his faculty, and so was not *habili modo* denuded of it. This being reported, "the LORDS found he had not, in these general words, disposed the reserved faculty, but only his right of liferent." At which interlocutor many wondered.

Fountainhall, v. 1. p. 129.

No 35.

1681. *January 13.* JOHN HALIBURTON *against* JOHN BARRIE.

"THE LORDS found a reversion on a paper apart of burgage lands needed not registration in the sasine register;" which was very hard; but there was a back-bond of trust in the case, and the Lords always find back-bonds of the same date to affect the right. See 6th Feb. 1678, Mackenzie, see APPENDIX.

THE LORDS went on the act 1617; but the act seems only to mean reversions incorporated in the body of the right; only it bears a general clause of "all other heritable rights thereof," which may contend and extend to reversions apart. But see the 29th act, Parl. 1655, requiring that instruments be taken on such reversions, which was in place of registration not then introduced. THE LORDS were very sensible of the omission of this act, and therefore supplied it by an act of sederunt, and ordained all such reversions in time coming to be registered.

Fol. Dic. v. 2. p. 330. Fountainhall, v. 1. p. 125.

* * * Stair reports this case:

1681. *January 18.*—IN a competition betwixt Barrie and Haliburton for a tenement in Edinburgh, there was produced a back-bond, bearing an obligation "to denude upon certain terms therein expressed;" and it being *alleged* that this was not effectual against a singular successor, unless it had been registered in the register of sasines and reversions, conform to the act of Parliament 1617, "declaring all reversions null if not registered," it was *answered*, That the act of Parliament contains a particular exception of sasines and all other rights of tenements within burghs. It was *replied*, That sasines within burghs are excepted, because the town-clerks in burghs are the only notaries to sasines in their burghs, and the town keeps their books and suffers them not to be kept by their clerks and their successors, as prothocols of private notaries, but are patent to all the lieges, and stand in place of registers, which hath been the cause of the exception; and therefore, though sasines within burgh be ex-

No 36.

Reversion on a paper apart of burgage lands needs not registration in the sasine register.