SECT. VII.

Infeftment on a Personal Right.—Sasine on a Precept of CLARE CONSTAT.—Infeftment in a Right of Annual-rent, taken on a Precept in a disposition of the Property.

1688. *November* 18. STARK *against* KINCAID.

No. 29.

STARK pursues Thomas Kincaid for reduction of the right of a tenement acquired by his father, by apprysing in favour of himself and his heirs whatsomever, on this reason, that by the contract of marriage betwixt his father and mother, the conquest during the marriage is provided to the heir of the marriage, and that he is heir of the marriage, and infeft in the tenement by the magistrates of Edinburgh as heir of the marriage, in which tenement his brother as heir of line was infeft, and was denuded. The defender alleged no process upon the pursuer's sasine, because it was null, for albeit there be a clause in the contract of marriage, providing the conquest to the heirs of the marriage, yet it is merely personal, and could be no ground to infeft the heir of the marriage, unless his father had been infeft, and his heirs of the marriage.

The Lords found this sasine null, and would not sustain process thereon.

Stair, v. 2. p. 802.

1739. *November* 9. PURDIE *against* LORD TORPICHEN.

No. 30.

The exception of precepts of *clare constat* in the 35th act of the parliament 1693, was found to be absolute, and that such precepts became ineffectual, not only where the receiver, but also where the granter died before taking sasine thereon, though still such precept or sasine was understood to be a title of prescription. But when the obtainer of a precept of *clare constat*, who had taken his sasine after the superior the granter's death, had conveyed the lands to a singular successor, who had obtained from the succeeding superior many years thereafter a confirmation of all rights, titles, and securities, in respect the obtainer of the said precept of *clare* was then in life, although the confirmation was only in the foresaid general terms, the same was found to be effectual to the purchaser, and not challengeable by the heir of the ancient vassal, predecessor of the obtainer of the said precept. This confirmation was considered as of the same effect as if the superior

had renewed the precept of *clare* to the obtainer of the former, though it did not appear whether or not he knew that he was then in life. No. 30.

Fol. Dic. v. 4. p. 264. Kilkerran.

*** This case is No. 87. p.10796. *voce* PRESCRIPTION.

1767. *July* 16. MITCHELL *against* ADAM.

No. 31.

AN infeftment, in a right of annual-rent granted by a person not infeft, proceeding upon the precept contained in a disposition of the property in favour of the granter of the annual-rent, was found inept.

It was pleaded: That precepts may be assigned in whole or in part, and that *majori inest minus*. But the answer was plain. Though there was a warrant for infeftment in the property, and which might have been executed as to a part of the subject, there was no warrant for an infeftment in a right of annual-rent.

Act. *John Douglas.* Alt. *James Grant.*

G. F. *Fol. Dic. v. 4. p. 264. Fac. Coll. No. 56. p. 291.*

SASINE, where it must be registered. See REGISTRATION.

SASINE unregistered what effect it has? See REGISTRATION.

SASINE in what cases a necessary solemnity? See INFEFTMENT.

SASINE where it must be taken? See UNION.

By whom it must be taken? See INFEFTMENT.

Transuming of a Sasine from the Prothocol. See TRANSUMPT.

Instrument vitiated. See WRIT.

See INFEFTMENT.

See APPENDIX.