

1740. *December 9.* EARL of HYNDFORD *against* The BURGH of Hamilton.

**No 19.**

Found, that the Sheriff could not transfer his court to the head burgh of the shire, from a burgh of regality where it had been held for centuries.

THOUGH the head-burgh of the shire be the place where the Sheriff-courts of right ought to be held, yet where, for almost two centuries, the Sheriff-court had been held in a burgh of regality, it was found that the Sheriff could not transfer the Sheriff-court from thence to the head-burgh of the shire, notwithstanding it appeared from the records, that in the most ancient times, the Sheriff-courts had been for some years held at the head-burgh of the shire; for that nothing certain could be inferred from the court's being held at the head-burgh for some years, in ancient times, when the place of courts was more ambulatory, to defeat the right which arose to the burgh of regality from such ancient possession, the original whereof could not now be known. And as to the argument for the Sheriff's power of transferring the courts to the head-burgh, notwithstanding the lapse of time, that he could not compel the burgh of regality to allow him the use of their court-house, or their prison, the long use was thought sufficient to establish to him a right to court and prison-houses.

*N. B.* On this occasion, it was thrown out by an able judge as his opinion, That where a regality, or even a barony, is erected into a body corporate with a burgh, and that there is a prison in such burgh, they are obliged to receive the King's prisoners, whether apprehended within or without the regality; though, where there is no burgh or body corporate, as is the case of the Duke of Athole's extensive regality of Logierieth, even though there be a prison and a court-house, the bailie of the regality is not bound to receive any prisoners but his own; but that wherever there is a burgh erected into a body corporate, then the prison of the regality or barony is the King's prison. *See PUBLIC POLICE.*

*Fol. Dic. v. 3. p. 164. Kilkerran, (CONSUETUDE.) No 1. p. 149.*

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SECT. IV.

Deeds executed in a Wrong Form.—Sasine not Registered.—Wrong Symbols of Sasines.

**No 20.**

It being the custom of a burgh, that all reversions should be under the form of instrument

1554. *June 15.* GALLOWAY *against* BURGH of DUMBARTON.

ANENT the action persewed be Mr Galloway against the Burgesses of Dumbarton anent the redemption of ane burrowland, in the said Burgh be virtue of ane reversion made in form of instrument, but it should have been under the seal

and subscription manual of party;—it was *replied* be the said Galloway, That it was use and custom of the said Burgh, past memory of man, that all reversion's made in form of instrument made be the common clerk of the town; were as sufficient as any other reversion; whilk reply was admitted be the LORDS, to the said Galloway, Provost.

*Fol. Dic. v. 1. p. 204. Maitland, MS. p. 119.*

1623. July 10. EDMISTON of Wolmet *against* \_\_\_\_\_.

IN this action of Edmiston of Wolmet *contra* \_\_\_\_\_, whereof the title of this pursuit was a sasine of a tenement of land within Leith, which being quarrelled by the defender upon nullity, because it was not registrate in the books of the clerk-register, conform to the act of Parliament in anno 1617;—the LORDS repelled the allegiance, and sustained the sasine, because it was of a tenement within Leith; which albeit it was not within a burgh-royal, and holden burgage, that thereby it might have the privilege of the exception contained in the act of Parliament, which is conceived in favours of burghs-royal; yet in respect of the consuetude and perpetual custom of giving of such sasines by the bailies of Edinburgh, and that never any was in use to be insert in the fore-said register, and of the dangerous consequence whereby many of the subject's right would fall if this nullity should have place; therefore the LORDS sustained the sasine, but nevertheless they declared, that if the excipient would allege that it was, and is, the custom in Leith to registrate sasines in that register, that they would sustain the allegiance.

Clerk, Hay.

*Fol. Dic. v. 1. p. 203. Durie, p. 72.*

1708. February 7. YOUNG *against* CALDERWOOD.

IN a competition for the rents of a house in Edinburgh, betwixt Sir Thomas Young and Calderwood of Pitteddie, it was objected, that Sir Thomas's sasine was null, because in the resignation made in the magistrates' hands, as the Queen's commissioners, the symbol of surrender is made to be tradition of earth and stone, which is the symbol proper only in sasines, whereas their fixt and known symbol by our stile, past all memory, is by staff and baton; and it is of very dangerous consequence, to change our ancient stiles, especially having no such warrant by the procuratory. *Answered*, It is confessed to be an error and mistake, but which has so generally prevailed, that many others have run into the same error; and to annul them all at one stroke may be very prejudicial to the lieges; for whatever the Lords may do in time coming, yet for

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taken in the town clerk's hands, the Lords sustained the same, altho' regularly, reversion's cannot be valid, unless subscribed by the party.

No 21.

An erroneous practice by which the magistrates of Edinburgh gave sasine of subjects in Leith, did not annul the sasine; on account of the constant custom, and the danger to many other sasines if the nullity should take place.

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A sasine by magistrates, with earth and stone, instead of staff and baton, was sustained on account of the custom; but the Lords declared they would hold any such future error to infer nullity.