

sum were paid, requires no redemption, but may be summarily taken off by payment or satisfaction, in same way as an apprising; and that the appriser, though not infest, having right to the mails and duties, might exclude the pursuer, who thereby would exhaust the mails and duties.

THE LORDS found the defence of payment competent to the appriser, without infestment.

Stair, v. 2. p. 759.

No 5.
ment of that
sum by an ap-
priser.

1682. *March.* FINDOWRY *against* TOWN OF BRECHIN.

FOUND, That for the constitution of rights and mortifications to towns or hospitals, a sasine is necessary to denude the disponent, in a competition with a singular successor, though sasine be not required for continuing such a right, in respect that *communitas non moritur*.

Fol. Dic. v. 1. p. 469. Harcarse, (INFESTMENT.) No 588. p. 163.

No 6.

1757. *July 6.*

WILSON *against* SELLERS.

No equity can relieve against want of infestment.

Fac. Col.

No 7.

* * * This case is No 19. p. 5184. *voce* GROUNDS and WARRANTS.

S E C T. II.

Effect of Resignation.—Effect of Renunciation.

1588. *January.*

MUIR *against* MUIR.

THERE was one Robert Muir burgess of Kirkcaldy, and Moreston his mother, pursued John Muir his brother, to hear and see a pretended renunciation, made in the Bailie's hands of a tenement of land, together with the infestment and sasine that followed thereupon, to be reduced and rescinded, because the said tenement being wadset to one Smellie, burgess of the said burgh, and who compeared personally before the bailies of Kirkcaldy, and there granted

No 8.
In double
resignations
the first was
preferred,
though sasine
was first
taken upon
the other.

No 8. the lands lawfully redeemed by the said Moreston, who had the right of the reversion, and thereafter resigned the lands in the said Moreston's hands, for sasine to be given to her heritably, as to her that had the undoubted right of the reversion, to redeem the said tenement; and so the said resignation made thereafter, with the infestment and sasine past thereupon, in liferent to the said Moreston and Muir her spouse, and his heirs, in fee and heritage, ought to be rescinded; because, in respect of the first resignation, the maker thereof was denuded of all title and right, and had no power to make the same. It was *excepted* by the defender, That the first resignation took not effect by sasine, but by the space of 20 years after the same was made, and so was *actus imperfectus*, and the resignation, with the infestment and sasine that was given in the meantime, was *actus perfectus*; and the matter being reasoned among the Lords *cum summa contentione*, it was *alleged*, That the second resignation, with the sasine that followed thereupon, ought to have place and be preferred to the first resignation, whereupon no sasine following, *quia de jure in acquirendo dominio ubi plures concurrunt, potiolem esse causam ejus cui prius traditio facta est, ut in L. 15. Cod. De rei vindicatione; textus est apertissimus, et est quasi declarativa juris, questione proposita in L. 6. C. De hæreditate vel actione vendita. 'Qui tibi,' ait lex, 'hæreditatem vendidit, antequam res hæreditarias traderet, dominus earum perseveravit, et ideo vendendo eas aliis, dominium transferre potuit;* and so, by the text, the first resigner and the first resignation being made, and no tradition of sasine following thereupon, remained still, *et ut ait lex, 'perseveravit in dominio,'* and might aye resign again in favour of the second, with sasine and tradition following thereupon; *quia fuit actus perfectus; et tenet Bald. conclusivè in dicta lege, 15. C. quod prioritas tituli non attenditur, sed prioritas traditionis, et 45. ibid. ait, quod quoties ad confirmationem alicujus, actus requiruntur duo, ille potior est, in cujus persona illi duo reperiuntur, titulus et sasina; quæ vero sasina resolvitur in terræ et lapidis traditione, ut moris est; and so the first resignation, without the sasine following thereupon, could never be judged to be *actus perfectus quoad domini traditionem*; but the resignation made thereafter, with the sasine and tradition, behoved to be preferred as before is rehearsed; *et Bald. quod non prioritas tituli sed traditionis attendebatur.* It was *answered* upon the other part, That the first resignation being made, the resigner thereof was utterly denuded, *et quod postea plus juris in alium transferre non potuit quam ipse habuit;* and albeit there was no sasine that followed immediately after the same, and that in the meantime, sasine was obtained upon the second resignation, yet the last sasine behoved to be drawn back to the first resignation, and made the same *actus validus et perfectus.* THE LORDS, after long reasoning repelled the exception, and found the reason of the summons relevant.*

Fol. Dic. v. 1. p. 469. Colvil, MS. p. 435.