

1618. *January 23.*MURRAY *against* SCHAW.

No 379.

IN AN ACTION betwixt Sir William Murray of Philiphaugh, and Mr Patrick Schaw, for an annual rent of 300 merks disposed by George Mitchell, first to his son by a sasine *propriis manibus*, thereafter to Mr Patrick Schaw by charter and sasine, the LORDS found, That the sasine given *propriis manibus* might be sufficient by a preceding contract of marriage, albeit there was no relation made thereto.

Fol. Dic. v. 2. p. 244. Kerse, MS. fol. 77.

No 380.

1623. *November 13.* MARSHALL *against* MARSHALL in Kirkcaldy.

A SASINE within burgh royal need not be inserted in the secretary's register, in burghs whereof the soil is held of subjects, and the tenements pay him feu-mail, if they obtain freedom and liberty of free burghs from his Majesty, albeit the tenements held feu of the superior of the burgh; yet sasines taken by the Bailie and town-clerk upon cognition, or by hasp and staple, will be sufficient, in respect of the common custom and interest of many parties, inhabitants of such burghs, as Anstruther, Dysart, Kirkcaldy, Burntisland, Dunfermline, and others, which as held of subjects, and yet have vote in Parliament, Albeit a town-clerk, in the extract of his sasine, design not himself town-clerk, yet the party may prove it *cum processu*.

Fol. Dic. v. 2. p. 246. Haddington, MS. No 2923.

* * Durie's report of this case is No 8. p. 6389. *voce* INDIVISIBLE.

No 381.

1623. *November 25.* E. MELROSS *against* L. BASS.

A sasine by hasp and staple is a sufficient proof against an heir, of his entry, to subject him *passive* to all his father's debts. It is likewise sustained as an active title.

THIS day it was controverted amongst the LORDS, if a sasine given to a party, of land within burgh, as heir to his predecessor, by the Bailie and Clerk, by hasp and staple, as use is in burgh, should verify the person so seized, to be heir to his predecessor *active*, without any preceding warrant, and service of court, cognoscing him to be heir. The cause of the doubt was, because such sasines could not be of another nature than sasines which proceed upon precepts of *clare constat*, which are granted by other superiors, and which prove not *active* for the receivers, but *passive* against them; but it was not doubted, but that the foresaid sasines in burgh gave the party right to the land, only it was controverted, if it was sufficient to furnish him action, as heir to that predecessor in other causes; but it were of a dangerous consequence not to find them to prove *active* as well as *passive*.

Fol. Dic. v. 2. p. 245. Durie, p. 83.