

brother, valuably to prove him heir to him *active*, albeit it was enough to prove against him *passive*; for albeit the sasine, by virtue of the precept of *clare constat* might be enough to maintain the person so infeft in possession of the lands, or to give him action against any who had right flowing from that author, yet the LORDS found, that such sasines will not furnish actions to them for any other thing, which they might seek *active*, as heirs thereby to their predecessors: But the LORDS find, that if this sasine had proceeded upon a retour, lawfully serving any person heir to their predecessor, albeit the sasine following thereupon be after the term of the warning, yet that the same ought to be drawn back, and would, in such cases, sustain pursuits of removing moved thereupon.

Clerk, *Gibson*.*Durie, p. 157.*

No 38.

1625. July 12.

TROUP against LORD HERRIES.

IN an action betwixt Troup, one of the Musicians of the Chapel Royal, and the Lord Herries, the LORDS found, that an inhibition, raised upon a simple gift of the defender's liferent escheat, albeit there was neither sentence nor summons raised upon that gift, the time of the raising of the inhibition, and albeit that the inhibition was only raised upon the said naked gift, and not upon any sentence or dependence, yet that the same was a sufficient inhibition, and raised upon a sufficient ground, viz. the gift foresaid; and sustained an action of spuilzie of teinds, pursued thereupon, against the intromitters with the teinds of the rebel, he being tacksman thereof; and, consequently, the right of his tack pertained to the pursuer, as donatar to his liferent, seeing, after the inhibition, he had obtained a declarator and sentence against the rebel.

No 39.

Aet. *Nicolson*.Alt. *Belshes*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 306. Durie, p. 177.*

1626. July 20.

NASMITH against Posso.

A LICENCE, granted to Anna Nasmith, (John's daughter,) as executrix to her brother, quarrelled by Posso, because posterior to the date of the summons, and sustained by the LORDS, notwithstanding thereof.

No 40.

*Fol. Dic. v. 2. p. 303. Spottiswood, (COMMISSARY.) p. 38.*