

No 387.

nualrent to his father; and albeit there was neither preceding adminicle to the sasine, nor yet any possession since the date thereof; and albeit it was only testified by the clerk's assertion, notary thereto) for pointing of the land, both for bygones and times to come, seeing the same was given by the Bailie and town-clerk, according to the usual form within burgh in such cases; which was sustained, albeit the sasine of the said annualrent bore not to be given to hold burgage; and which the defender alleged ought not to be respected as in other sasines of lands held burgage, where the assertion of the Bailie and town-clerk, testified by the clerk's instrument, is sufficient; which was repelled, and the sasine sustained.

Act. *Fletcher.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. 2. p. 246. Durie, p. 437.*

No 388.

1629. July 16.

SCOT *against* DEANS.

A SASINE of a house in the town of Hawick, found a good active title in a process, though granted only by the Bailie of the burgh, notwithstanding it is only a burgh of barony, and that it is the peculiar privilege (as was pleaded) of royal burghs, holding burgage, to have sasine granted by their Bailies; but here it is observed, that the superior concurred with the pursuer; but if he had granted a precept of *clare constat*, it would have been a more unexceptionable evidence.

*Fol. Dic. v. 2. p. 246. Durie.** * This case is No 20. p. 6899, *voce* INFERTMENT.

1629. July .

WILSON *against* STUART.

No 389.

A sasine of burgage lands to a man as heir to his father, was found sufficient to instruct him heir with regard to a process of wardance pursued by him.

ONE Wilson, as heir to his father, pursuing one Stuart to warrant a tenement in Glasgow, disposed by the said Stuart to his said father. It was found, That the pursuer's sasine produced to instruct him heir, being given by the Bailies of Glasgow, by hasp and staple, cognoscing him to be heir, was sufficient to instruct him heir, and to produce this action, albeit he was not heir served and retoured, the same being within burgh, and the pursuer being convened as heir, to pay to this defender the price of the land annailzied, in another process pursued against him, as heir *passive* of before; for it was found, that this party could not oppone, nor quarrel the right whereof she was author herself to the pursuer's father, and for which she convened the pursuer as heir, and so the sasine was sustained; but it might have been more doubted, if this sasine would have produced action against any third person, or any stranger pretending right to the land, albeit it will ever produce action against the tenants of