

1632. July 5. SHERIFF OF FORREST *against* TOWN OF SELKIRK.

No 4.

A charter granted to a predecessor of small customs was found sufficient, tho' no special sasine was taken of these customs, there being a sasine of the lands contained in the charter.

IN a reduction of an infestment of the small customs of Selkirk, granted by K. Ja. 5. thereof, to the Town, upon a reason of anteriority and prior right, made of the same by K. Ja. 4. to the pursuer's predecessors, to whom he was retoured heir; the defenders alleging, that the pursuer's predecessors' charter of their customs could not be a title to produce this action, because there was no special sasine of the same produced, granted conform to that charter; also that the pursuer's own sasine could not be a title to pursue, because it proceeded upon a retour out of the Chancellary, and was not given by the sheriff-clerk, conform to the act of parliament, and so was null. THE LORDS found, That the charter granted to the pursuer's predecessor, of the customs, was sufficient, albeit there was no special sasine taken of the customs, in respect there was sasine of the lands contained in that charter, taken conform thereto, produced, and that there needed no special sasine to have been produced of the customs, which was *jus incorporeum*, no more than there needed to be taken of the patronage of a kirk; and also the pursuer offered to prove, that conform to that charter, by the space of 20 years after the same, count was made in Exchequer of these customs, so that thereby the charter was corroborated with possession, and so needed no sasine; which was sustained, and the allegiance repelled: And as to the other, that the pursuer's sasine was alleged not to be given by the sheriff-clerk, the LORDS sustained the process, upon the production of the pursuer's retour, and his predecessor's sasine, to whom he was retoured heir, albeit no sasine were produced, and so they respected not the defect of the sasine alleged; but the LORDS inclined, if the sasine had been necessarily required to be used as a title, to find the same null summarily by way of exception, if it had not been qualified that the notary, giver of the sasine, was then sheriff-clerk.—See PATRONAGE.

Act. Nicolson, Stuart, & Craig. Alt. Cunninghame & Mowat. Clerk, Gibson.
Fol. Dic. v. I. p. 469. Durie, p. 640.

1680. February 18. CAITHNESS *against* The LADY PLENDERGAIST, &c.

No 5.

An infestment qualified by a back bond, that it was only granted till the purchaser was paid a sum, was found summarily annullible by offering pay-

MR JAMES CAITHNESS being infest in the lands of Plendergaist, pursues a removing against the Lady. Compearance is made for John Craw, appriser, who *alleged*, That the pursuer's right being qualified by a back-bond, bearing, 'That it was only granted till he were satisfied of a sum;' he offered to prove the payment of the sum. It was *answered*, That the appriser not being infest, had no interest to remove, or hinder removing; *2do*, That an infestment could not be taken away by exception, not being an apprising, but behoved to proceed by declarator or reduction. It was *replied*, That an infestment till a