

No. 23. claim as a personal creditor, and may be ranked on the estate, *ultimo loco*, he always adjudging before drawing."

When a petition for Major Melville against this interlocutor was moved, a doubt was expressed, how far Lady Gordon might not be held as fiduciary fiar in George's half, and the security on that account effectual; but, when it was advised with answers, these doubts were given up; and the Court approving of the *ratio decidendi* expressed in the interlocutor of the Lord Ordinary, unanimously "sustained the interest of the petitioner to the amount of the whole liferent; and, with this addition, adhered to the interlocutor reclaimed against."

Lord Ordinary, *Justice-Clerk*.

For Major Melville, *Solicitor-General Blair*.

Alt. Rolland. Clerk, *Pringle*.

*Fol. Dic. v. 4. p. 264. Fac. Coll. No. 103. p. 230.*

## SECT. VI.

Sasine of different Lands taken place at one only.—The same Person both Bailie and Attorney.—Sasine taken in the Night.—Notary's Attestation of the number of Leaves.

1636. *March 19.*

LAIRD LAWRISTON *against* LADY DUNNIPACE.

No. 24.

Where lands are discontinuous, unless the sasine be taken at the place named by the king in the act of union, the sasine is null.

THE Lady Dunnipace, younger, being infeft by her husband and her father-in-law, in conjunct fee, in certain lands of his, lying in the Mearns principally, and in the lands of Seabegs, lying within the sheriffdom of Striviling, in special warrandice of the said principal lands, and sasine being given to her of the said lands, both principal and warrandice, at the ground of the lands in the Mearns, which were the principal, conform to an union made by the granter thereof in favours of the Lady, whereby he appointed the sasine to be taken at such a place designed by him for that effect, to serve for all the lands, both principal and warrandice, and according whereto she was seised at the said place, *viz.* at the ground of the lands of in the Mearns, which was appointed to be the place of union constituted in the Lady's right; it being of verity, that all the said lands, both principal and warrandice, were united to the old Laird of Dunnipace himself, in a barony by the King, and sasine appointed to be taken at the place of Lawriston in the Mearns, and to serve for the whole foresaid lands, notwithstanding of the discontinuity thereof; and this place of the King's union contained in the Laird's charter, not being that place designed in the Lady's infeftment, wherent he appointed

her to take her sasine to serve for the said lands provided to her in liferent, but being another place designed by himself; and after the said Lady's infestment, the old Laird disposing the lands granted to her in warrandice to the Laird of Lawriston, for causes most onerous of debt, wherein he was bound, and had paid the same for him; which Laird of Lawriston craving by a pursuit of declarator, that it might be decerned, that her right might not be found to extend to these warrandice lands, disposed as said is to him, for this reason; viz. because she was not seised upon the ground of the said lands, they lying so far discontinuous from the other lands, wherewith her sasine was taken, conform to the warrant of the said union made by her husband, which could not sustain, being done and made at another place than the place of the union appointed to himself by the King's charter granted to him as said is, and so could not strike against the said warrandice lands: The Lords found this reason relevant and proven, and in respect thereof, found the said sasine and right, so far as concerned the warrandice lands, to be null, and decerned against the same, conform to the desire of the summons.

Act. *Nicolson.*

Alt.

Clerk, *Gibson.**Durie, p. 806.*

1676. February 24.

HILTON against LADY CHEYNES.

THE Lady Cheynes being infest in an annual-rent upon a right granted by her husband, her sasine was questioned upon these grounds: 1st. That it was null, in so far as the bailie and attorney in the sasine were one person, who could not both give and take the sasine: And, 2d, The provision was during marriage, and after the creditor that did compete, his debt; and though it could be sustained, where there was no contract of marriage for a competent provision; yet it could not be sustained for the whole annual-rent, being exorbitant, her husband's estate and debt being considered.

The Lords, in respect it did not appear evidently, that it was a mistake of the notary, that the sasine did bear the same person to be both bailie and attorney, in the clause of tradition; and seeing by the first part of the sasine, it was clear, that there was a distinct attorney who did present the sasine to the bailie; did therefore incline to sustain the sasine: but, before answer to that point, they ordained the parties to be heard upon the said other allegiance, and the relief to condescend upon her tocher and the rent of the estate, and the creditor upon the burdens.

*Newbyth, Reporter.**Fol. Dia. v. 2. p. 363. Dirleton, p. 165.*

No. 24.

No. 25.

Where a sasine bore that the same person had been both bailie and attorney, it was sustained notwithstanding, as it appeared otherwise that this was a mistake.