

rant thereof, and therefore ought not to be sustained to prejudge a true creditor who hath comprised, and is infest; but the creditor ought to be preferred to the right of the said land, notwithstanding of the said infestment granted to the wife. In this process, the defender being absent, and the pursuer producing the defender's sasine, extracted out of the notary's prothocol, which being conferred with the debt, whereupon the comprising was deduced, the LORDS found the reason relevant and proved by the said sasine, being of the tenor foresaid, and none compearing to show any other adminicle or warrant for sustaining thereof; notwithstanding that the debts for which the comprising was deduced, were of a posterior date to the wife's sasine quarrelled; but the LORDS found it requisite to the pursuer to prove further with this reason, that the wife, the defender, was otherwise sufficiently provided to some reasonable proportion of her husband's lands, whereby she might competently live, by and attour the lands contained in this sasine quarrelled.

No 393.

Act. *Præsent.*Alt. *Johnston.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 245. Durie, p. 884.*

1664. December 20. GEORGE NORVAL Advocate against MARGARET HUNTER.

No 394.

A sasine is no presumptive proof of its supposed warrant.

MR GEORGE NORVAL pursuing for mails and duties upon an apprising. Compearance is made for Margaret Hunter, who *alleged* absolutor, because she was infest in liferent before Mr George's right; which being found relevant for instructing thereof, she produced her sasine;

Which the LORDS found not to instruct without an adminicle, and therefore sustained the decret.

The said Margaret raised reduction of this decret on this reason, That now she produced an adminicle, viz. her contract of marriage; *2dly*, That the decret is null, because the quantities are not proved. The charger *answered* to the first, That the Lords having found the exception not proved, the pursuer could not be admitted in the second instance against a decret *in foro*, upon production of that which she should have produced at first. As to the second, he needed not prove the quantities; seeing her exception was total without denying the quantities.

THE LORDS found the decret valid, but ordained some of their number to deal with Mr George, to show favour to the poor woman. (The next case is the sequel of this.)

*Fol. Dic. v. 2. p. 244. Stair, v. 1. p. 244.*

1665. June 29. MR GEORGE NORVAL against MARGARET HUNTER.

No 395.

A contract of marriage found sufficient to sup-

MR GEORGE NORVAL having appraised certain lands, pursued for mails and duties against Margaret Hunter possessor, she compeared and proponed a de-