

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-

No 395.
port a wife's
sasine even in
competition
with an ap-
prising.

fence, That she stood infest in the lands, by a right from her husband before the apprising, but for proving thereof she only produced her sasine.

Which the LORDS found not to prove without a warrant, and therefore discerned.

She suspends, and now produces her contract of marriage, as the warrant of the sasine, and offers to make faith, that she had found it out since the decret; and farther *alleged*, That through neglect of the advocates or clerks, her defence was not proponed, noways acknowledging the quantities libelled, which she offers to prove to be exorbitant. It was *answered, first*, That *prætextu instrumentorum de novo reptorum sententiæ non sunt retractandæ. zaly*, The contract produced is not the warrant of the sasine, but a bond granted for implement of the contract, and relating to the sasine.

THE LORDS reponed the suspender, as to the circumduction of the term, she making faith, &c. and found the contract of marriage a sufficient adminicle to astruct the sasine, seeing it related to a bond for the same cause, but refused to repon her as to the quantities.

Fol. Dic. v. 2. p. 245. Stair, v. I. p. 290.

1668. June 19. RELICT of Galrigs *against* WALLACE of Galrigs.

No 396.
A sasine *propriis manibus*
of a husband
to his wife,
who had no
other provi-
sion, found
a sufficient
title.

THE Relict of Galrigs pursues for mails and duties upon her sasine, given *propriis manibus*. It was *alleged* for Galrigs, No process, because the sasine is but *assertio notarii*, without a warrant, there being neither a contract nor obligation to give such a sasine. It was *answered*, That instruments of sasine given to a wife, *propriis manibus*, have a sufficient adminicle and presumption by the marriage, and the duty of the husband to provide the wife, especially where there is no contract nor other provision, but most of all where the wife renounced her jointure she had with a former husband in favour of the grant-er of the sasine, and his creditors, which is a strong presumption he would give her something in lieu thereof;

Which the LORDS sustained.

Fol. Dic. v. 2. p. 245. Stair, v. I. p. 541.

* * Gosford reports this case :

JEAN WALLACE, Relict of William M'Kerral of Hillhouse, being again married to Wallace of Galrigs, by contract of marriage, she was provided to two chalders of victual out of the lands of Correath, which thereafter she renounced, and consented to a disposition thereof, upon sasine given her by her husband *propriis manibus* of two chalders of victual out of other lands; whereupon after the death of her husband, her son, as assignee, did pursue Galrigs heir,