that the clerks do not fail to registrate the same, and if they do not book them, it ought to be imputed to them, and not to the party. *In presentia.* No 28.

For the Sasine, *Sir David Falconer.* Alt. *Seaton.* Clerk, *Hay.*

Dirleton, No 348. *p.* 166.

*** See Thomson against M'Kittrick, No 12. p. 6892, *voce* INFEFTMENT.

1672. *November* 29. MAXTON *against* CUNINGHAM.

No 29.

CERTAIN tenements in Edinburgh being apprised from John Ker, first by William Cuningham, and thereafter by Sarah Maxton; in the competition betwixt them, it was *alleged* by Maxton, That she ought to be preferred, because her apprising was allowed conform to the act of Parliament, and Cuningham's apprising (though prior) was not allowed, and so null. It was *answered* That the not allowance does not infer a nullity, but only hinders the preference of the first apprising to a posterior apprising first allowed; so that all that can be thence concluded is, that neither apprising should be preferred, but that both should come in *pari passu.*

THE LORDS found both the apprisings to come in *pari passu.*

Stair, v. 2. *p.* 123.

*** See 17th July 1668, Stewart against Murray, No 80. p. 8384., *voce* LITIGIOUS.

1673. *June* 12. FAA *against* LD. POWRIE.

No 30.

A SUPERIOR'S sasine, though not registered, was found a good title in a declaraor of non-entry against the vassal, who did pretend no right to the superiority.

Fol. Dic. v. 2. *p.* 331. *Stair.*

*** This case is No 25. p. 9307, *voce* NONENTRY.

*** Such a sasine was sustained as an active title in a reduction and improbation, 14th November 1678, Dalmahoy against Ainslie, No 8. p. 5170., *voce* GROUNDS and WARRANTS.

1675. *July* 20. DUNIPACE *against* OLIVESTOB.

No 31.
A private discharge of a renouncia-

THERE being certain lands given in wadset by the heritor, and the reversion contained in the right of wadset, which wadset was thereafter denounced, and

No 31. tion of a registered wadset found good against a singular successor.

the renunciation registered; after which the heritor having granted a discharge of the renunciation, and so put the wadsetter in his own place, as if he had not renounced; but the discharge was not registered; a singular successor having acquired the right of the wadset, and the lands being disponed or comprised from the heritor, or first granter of the wadset; there was a declarator intented, which of them had best right, and ought to be preferred; the ground of the debate being, that the discharge of the renunciation ought to be registered, it being necessarily required by the 16th act of the 17th Parliament of King James the Sixth, requiring all reversions and assignations thereto, discharges thereof, and renunciations of wadset, to be registered within 60 days after the date, otherwise to be null; so that the question being anent the registration of a discharge of a renunciation of a reversion, the parties having agreed among themselves, did remit to the Lords, to determine if the discharge was null for want of registration; and so the heritor and granter of the wadset, and those having right from him, had the undoubted right of the lands free of the burden of the wadset. THE LORDS did seriously consider the act of Parliament, seeing this was to be a leading case, and found, that the act of Parliament being *stricti juris*, and contrary to the old law and custom, could not be extended to any case but those expressly related to in the act foresaid; whereas there was no particular mention of the discharges of renunciations, the act bearing only, that reversions, regresses, bonds for making the same, assignations thereto, discharges thereof, renunciations of wadsets, and grants of redemption; they are not at all mentioned, so that unless there were a new act of Parliament, declaring the same, they stand good in law, as they were before the act of Parliament, and did so decern; albeit that it seems that, in law and reason, there is *par ratio* that the discharges of renunciations ought to be registered, as well as the renunciations themselves, seeing the great reason of that act was, for the security of singular successors, who were often prejudged of their heritable rights of lands, or annualrent, wherein their authors stood publicly infeft, by private or latent deeds and writs, which it was impossible for them to know, or find out, and therefore the act of Parliament was made, that all such writs should be registered; and therefore a discharge of a renunciation granted by the heritor, who did give the wadset, being of that importance that it takes away the benefit of the renunciation from the first granter, and makes the wadset subsist and stand good as it was before the discharge, *ratio quæ est anima legis* necessarily requires, that the same should be made public by registration, to put all *in tuto* to contract with the wadsetter, as having undoubted right by a public discharge of the renunciation of the wadset; but yet the LORDS found, that *ratio legis* was not enough, and that there was necessity of a new act of Parliament, and seeing this act founded upon was *correctoria juris antiqui* it could not be extended by them, but by the Parliament.

Fol. Dic. v. 2. p. 330. Gosford, MS. No 784. p. 492.