

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

sum were paid, requires no redemption, but may be summarily taken off by payment or satisfaction, in same way as an apprising; and that the appriser, though not infest, having right to the mails and duties, might exclude the pursuer, who thereby would exhaust the mails and duties.

THE LORDS found the defence of payment competent to the appriser, without infestment.

*Stair, v. 2. p. 759.*

No 5.  
ment of that  
sum by an ap-  
priser.

1682. *March.* FINDOWRY *against* TOWN OF BRECHIN.

FOUND, That for the constitution of rights and mortifications to towns or hospitals, a sasine is necessary to denude the disponent, in a competition with a singular successor, though sasine be not required for continuing such a right, in respect that *communitas non moritur*.

*Fol. Dic. v. 1. p. 469. Harcarse, (INFESTMENT.) No 588. p. 163.*

No 6.

1757. *July 6.*

WILSON *against* SELLERS.

No equity can relieve against want of infestment.

*Fac. Col.*

No 7.

\* \* \* This case is No 19. p. 5184. *voce* GROUNDS and WARRANTS.

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## S E C T. II.

### Effect of Resignation.—Effect of Renunciation.

1588. *January.*

MUIR *against* MUIR.

THERE was one Robert Muir burgess of Kirkcaldy, and Moreston his mother, pursued John Muir his brother, to hear and see a pretended renunciation, made in the Bailie's hands of a tenement of land, together with the infestment and sasine that followed thereupon, to be reduced and rescinded, because the said tenement being wadset to one Smellie, burgess of the said burgh, and who compeared personally before the bailies of Kirkcaldy, and there granted

No 8.  
In double  
resignations  
the first was  
preferred,  
though sasine  
was first  
taken upon  
the other.