

possession. *2do*, There is produced a sasine of the son's, upon a disposition from the wadsetter, which being clad with forty years possession in the son, and his relict deriving right from him, it makes the same a complete right, whereby the oye cannot pass by the father, and go to the goodsire; and though the relict cannot produce the warrant of her husband's sasine, which hath been abstracted by her step-son, who hath transacted with Sir Alexander, and colluded to exclude his father's relict, yet this sasine, with forty year's possession, is sufficient by the act of prescription. It was *duplicated*, That the act of prescription doth never give right upon sasines without a warrant, except such sasines as proceed upon precepts of *clare constat* and retours; but in all other prescriptions, it requires a charter or precept before the years of prescription, and sasines, and possession subsequent for forty years; but this sasine of the relict's husband hath neither a charter nor precept antecedent, nor doth it proceed upon retour or precept of *clare constat*.

THE LORDS found, That this sasine neither having a warrant produced, nor proceeding upon a retour or precept of *clare constat*, is no title of prescription; and that the wife's own infestment cannot infer prescription by her husband's possession, unless she had possessed forty years after his death.

*Fol. Dic. v. 2. p. 103. Stair, v. 2. p. 677.*

1680. November 19.

CUMMING against IRVING.

CUMMING of Cowtter being infest in the lands of Cowtter, with the salmon-fishing of the water of Dee on both sides, adjacent to his lands, pursues improbation and reduction of all rights to the salmon-fishing in the said water, and craves certification *contra non producta*. The defender *alleged*, No certification, because he produces extracts of his father's and grandfather's sasines of the lands of Kincousie, and the salmon-fishing upon the water of Dee, which lands are opposite on the other side to Cowtter, and offers to prove forty years possession, by virtue of these infestments, with his own infestment produced.— The pursuer *answered*, That the extracts of sasines could not satisfy the production in improbations. *2do*, Even the principal sasines are no title for prescription by the act of prescription 1617, unless they had proceeded upon retours, or had a charter or precept anterior to forty years possession. The defender *replied*, That the pursuer's father having married his mother, his father being killed in the King's service when he was an infant, many of his writs were amissing, and it is likely his writs might have been abstracted by his step-father to carry this fishing, and therefore he had raised and executed a probation of the tenor, desiring therefore that no certification should be extracted, till he might conclude the tenor.

No 79.

No 80.

Found that extracts of sasines could not be a title for prescription.

No 80.

THE LORDS found, That the extracts of the sasines could not satisfy the production in the improbation, nor could they be a title for prescription, and therefore granted certification, superseding the extract till July next, that the tenor might be closed, and ordained the same to be taken in *incidenter* in this process.

*Stair, v. 2. p. 803.*

No 81.

1681. *November.* POURIE *against* LORD BALMERINOCHE.

It was debated, but not determined, if an unregistered sasine, which is null by act of Parliament *quoad* singular successors, might be a title of a valid prescription, as a writ wanting witnesses, or labouring under some other nullity might be.

*Harcarse, (PRESCRIPTION.) No 757. p. 214.*

1695. *December 17.*

THE ADMINISTRATORS OF HERIOT'S HOSPITAL *against* ROBERT HEBURN.

No 82.

A procuratory of resignation, with a sasine relative thereto, was found a sufficient title for prescription, although the precept was wanting.

THE LORDS advised the debate between the Administrators of Heriot's Hospital and Robert Hepburn of Bearford, anent the mortified annualrents acclaimed out of his tenement in Edinburgh, called the Black Turnpike. On the 29th of December 1691, the LORDS had found, that Bearford's and his author's prescription and immemorial possession without interruption, both prior to the act introducing prescription in 1617, and since the same, could not defend him, because the Hospital consisting of minors, (as all *orphanotrophia*.) prescription could not run against them; and which decision is recorded in Stair's Institutes, B. 2. T. 12. § 18.—THE LORDS having heard them at great length on their mutual reasons of reduction against one another's rights; such as that the Hospital's mortification was *a non habente potestatem*, no right being shown in the Bishop, the mortifier, except an obligation by the two sisters, called Crichton, to dispo, which was merely personal, and never perfected, and related only to a part of the land;—and, on the other hand, it was *objected* against Bearford, That he produced nothing but unconnected and inconsistent progresses from the Robisons and the Crichtons; and, at best, they were only sasines upon heep and staple, which, though a manner of conveyance within burgh, yet give no right without production of their warrants, as had been frequently decided, and, particularly, 21st June 1672, Mitchell *against* Cowie, *voce* PROOF; and 11th February 1681, Irvine *against* Corsen, *IBIDEM*.—THE LORDS thinking both their rights defective,