

No 85.

liament, and that it were of a most dangerous consequence to sustain a naked sasine that was never adminiculate during all that time; as likewise, that the possession had not been as undoubted and only proprietors of the said lands, but confest on both sides that it was a mixed possession by the Earls of Argyle and the Lairds of M'Naughton jointly, the Earls of Argyle not only being superiors, and having the universal privilege of a forrestry by hunting and keeping of deer, but likewise having sheels, houses, and steadings of mares and kine in several places, as well as the Lairds of M'Naughton. But as to the manner of possession, and how far it might operate, after a great debate, the LORDS, before answer, ordained witnesses to be led by both parties.

*Gasford, MS. No 335. p. 154.*

1680. June 25. EARL of QUEENSBERRY against EARL of ANNANDALE.

No 86.

It was found, that the sasine of an heir who did not himself possess the whole forty years, never being renewed to his successors, who all of them continued to possess as apparent heirs, was no sufficient title of prescription.

IN an improbation pursued by the Earl of Queensberry against the Earl of Annandale, the pursuer excluding the defender with a decret of certification obtained against his author in 1619, *alleged* against it, That it was null, because the Lord Crichton was only called thereto, and not Irvine of Bonshaw, in whose favours Crichton was denuded; *2do*, That it was prescribed. *Answered* to the *first*, There needed no other be called but Crichton, for he was the immediate vassal, and he was not bound to know Bonshaw the sub-vassal; And as to the *second*, The certification in 1619 interrupted the prescription. THE LORDS sustained the certification in 1619, in respect the immediate vassal was cited; and repelled the prescription, because of the interruption produced: As also, the LORDS found a sasine not sufficient without the precept of *clare constat*, its ground, albeit Annandale offered to prove they were forty years in possession by virtue thereof, unless they would say that he whose sasine it was lived and possessed forty years by virtue thereof; for the possession of his successor within these forty years would not make up the prescription, unless it be proved that that successor was likewise infest: Yet the LORDS, after the certification, found it relevant for Annandale to prove, that the lands controverted were parts and pertinent of the lordship of Johnston, and to Queensberry to prove they were a part of the lordship of Torthorrel, and allowed a mutual probation.

*Fol. Dic. v. 2. p. 103. Fountainhall, MS.*

1739. November 9.

PURDIE against LORD TORPHICHEN.

No 87.

IN a competition about the property of a land-estate, one of the parties founded upon the positive prescription, and produced instruments of sasine in the person of his author and his predecessor, standing together for the space of 40