

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 dispoise, 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,