

Patrick's disposition. THE LORDS inclined to find this discharge null and fraudulent, as *inter conjunctissimas personas*, on the act 1621. *2do*, *Alleged*, Dougal the father had not exerted his reserved faculty, and so the son's right stood unrevoked. *Answered*, It was tacitly altered by the father, in so far as he had disposed all right he had to the said lands. *Replied*, He had not mentioned his faculty, and so was not *habili modo* denuded of it. This being reported, "the LORDS found he had not, in these general words, disposed the reserved faculty, but only his right of liferent." At which interlocutor many wondered.

Fountainhall, v. 1. p. 129.

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1681. *January 13.* JOHN HALIBURTON *against* JOHN BARRIE.

"THE LORDS found a reversion on a paper apart of burgage lands needed not registration in the sasine register;" which was very hard; but there was a back-bond of trust in the case, and the Lords always find back-bonds of the same date to affect the right. See 6th Feb. 1678, Mackenzie, see APPENDIX.

THE LORDS went on the act 1617; but the act seems only to mean reversions incorporated in the body of the right; only it bears a general clause of "all other heritable rights thereof," which may contend and extend to reversions apart. But see the 29th act, Parl. 1655, requiring that instruments be taken on such reversions, which was in place of registration not then introduced. THE LORDS were very sensible of the omission of this act, and therefore supplied it by an act of sederunt, and ordained all such reversions in time coming to be registered.

Fol. Dic. v. 2. p. 330. Fountainhall, v. 1. p. 125.

* * * Stair reports this case:

1681. *January 18.*—IN a competition betwixt Barrie and Haliburton for a tenement in Edinburgh, there was produced a back-bond, bearing an obligation "to denude upon certain terms therein expressed;" and it being *alleged* that this was not effectual against a singular successor, unless it had been registered in the register of sasines and reversions, conform to the act of Parliament 1617, "declaring all reversions null if not registered," it was *answered*, That the act of Parliament contains a particular exception of sasines and all other rights of tenements within burghs. It was *replied*, That sasines within burghs are excepted, because the town-clerks in burghs are the only notaries to sasines in their burghs, and the town keeps their books and suffers them not to be kept by their clerks and their successors, as prothocols of private notaries, but are patent to all the lieges, and stand in place of registers, which hath been the cause of the exception; and therefore, though sasines within burgh be ex-

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cepted, reversions within burgh are not generally excepted, but only such reversions as are expressed in the sasines. It was *duplicated*, That there are three exceptions in this statute, *1st*, Of sasines and reversions therein; *2dly*, Of all real rights of tenements within burghs, which extends to reversions not contained in the sasines, and to assignations to, and discharges of reversions, which cannot be in sasines; and there is a third exception of all reversions incorporated in infeftments, which extends not only to reversions in burghs, but in the country; all which are valid and effectual against singular successors without registration. It was *triplicated*, That the Lords, by act of Parliament, have the interpretation of all acts of Parliament; and therefore this being a great interest for the lieges not to be deceived by latent rights, the act is capable of that interpretation, that within burgh sasines are not effectual against singular successors unless they be found in the town's books; nor reservations, unless they be in the sasines which are in the town's books; so that the adjection of these words, "all other rights of tenements within burghs," can only be understood as a pendicle of a former clause of reversions contained in sasines, and so must except only other rights contained in sasines; *2do*, The Lords do not only interpret acts of Parliament, but extend them *ad pares casus*, as they have done in the statutes against bankrupts; and therefore if the reversions within burgh, not being in sasines, had been omitted, the Lords ought to extend the statute to these, seeing the narrative of this statute bears expressly, "to prevent fraud, and the hazard of purchasers *bona fide*," which extends as well to burgh as landwart. It was *quadruplicated*, That though the Lords may interpret statutes, yet it must be *in casu dubio*, as the words may bear; but here there is a clear exception from the whole statute of sasines, "and all other real rights within burghs," and therefore sasines in burgh are valid, though the town-clerk had omitted to insert them in the town's books, which are his prothocol; which after full debate was decided in the case of one Swan in Aberdeen, No 28. p. 13550, and therefore it is a mistake that the town's books are put in place of registers within burghs; but it is a total exception from the whole act, and it is like upon this consideration that the tenements within burgh are for most part inconsiderable, and it would infer too great a burden to register all their real rights; and albeit it were a public good, that all real rights within burgh were registered there, yet *éget constitutione imperiali*; and the Lords have no legislative power; for albeit they sustain cases of fraud beyond the statute against bankrupts, yet that is because fraud is a general exception, and not merely by statute, as the nullity of real rights upon not registration is; and albeit the Lords may be strict in the matter of fraud, by the latency of rights within burgh, yet they cannot find them null for want of registration.

THE LORDS found this bond, "obliging to demude upon certain terms," to be a reversion, and being of tenements within burghs-royal, found it effectual against singular successors without registration, albeit not contained in any sasine, and that the clause "of all other rights of land within burgh," with the

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prior clause, excepting sasine, and the clauses therein did except sasines and reversions, whether in or without sasines, being of tenements within burghs-royal; but they appointed a warrant to be sent to the Convention of Burghs, ordering them "to take caution of their clerks to insert all sasines within burgh in the town's-books, under the hazard of deprivation, and being liable to the hazard of parties by the latencies of sasines;" and recommended to them also by their own acts of burgh, under severe penalties, to ordain "reversions and assignments thereto, and renunciations and discharges thereof to be registered in the town's-books;" certifying, that if this were neglected, that the Lords would consider such rights as latent and fraudulent to deceive purchasers, unless they were some way publicly made known.

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Stair, v. 2. p. 835.

1684. *March.* Lord MARR and CARDROSS *against* Lady KINGARDIN.

No 37.

A SASINE given in to the register by the Earl of Marr, and marked *debito tempore* in the minute-book, being taken up before it was inserted in the register, to pursue thereon for mails and duties, and being neglected to be given back till the register was filled up, so that there was no room to register it within sixty days of the date thereof, the Lord Marr applied to the Lords, that they would ordain his sasine to be registered according to the date in the minute-book; but the LORDS found they could not do it.

Harcarse, (REGISTRATION.) No 832. p. 239.

1684. *March.*

PATRICK SYME *against* The Lord TORPHICHEN, CHARLES OLIPHANT and Others.

No 38.

FOUND that a discharge of the reversion of a wadset, and of the legal of an apprising, though not registered within sixty days, could not be quarrelled by posterior singular successors without onerous causes, seeing the discharge containing an obligation of warrandice, would reduce the said voluntary rights upon the act of Parliament 1621. And it may be *contended*, That legal real diligences by apprising, &c. following upon posterior gratuitous bonds, might quarrel the want of registration, unless there had been inhibition raised upon the warrandice before granting of the said bonds.

Harcarse, (REGISTRATION.) No 833. p. 239.