

No 12. James Cunningham, Town-clerk, had not taken the tender, conform to a public proclamation then emitted; and there is no necessity of registering sasines of burgh lands.

THE LORDS, in respect of the time, found the allegiance relevant, that M^r Birnie was reputed Provost for the time, who had made use of this notary as Town-clerk, not only in this, but in other cases. This also found in July 1666.

Gilmour, No. 44. p. 32.

1686. *February.* COUNTESS OF KINCARDINE *against* EARL OF MARR.

No 13.

THE LORDS found, that an infestment of burgage lands from the King was not from the right superior, though the Magistrates of Royal Burghs are reputed only the King's Bailies, and burgage holds of the King; and, therefore, preferred a posterior infestment from the Bailies and Town-clerk. *2dc.* They found that a few acres, bought by my Lord Kincardine from several heritors, being imparked, and so naturally united, and contiguous with some other parcels of his own land, a disposition, given by a subject, for taking sasine at the manor-place for all these acres and park, was sufficient, without a formal erection and union from the King.—See UNION.

Fol. Dic. v. 1. p. 470. Harcarse, (INFESTMENT.) No 604. p. 168.

* * * Sir P. Home reports this case :

1687. *June.*—IN the competition among the Creditors of Kincardine, it being *alleged* for the Lady Kincardine, That they ought to be preferred to the Earl of Marr, as to the lodging, yards, and parks of Culross, because the lodging, yard, and whole parks, are a part of the Abbey of Culross, and are within the erection of the burgh, as appears by the charters of erection, except 17 acres, which are particularly excepted in the erection; and which lands hold burgage of the town, and the Lady is infest, holding burgage; whereas, the Earl of Marr is infest under the Great Seal, holding of the King; so that he being infest by the wrong superiors, the Lady ought to be preferred: As also, the Earl of Kincardine acquired the house, yard, and several acres of land within the park, at different times, and from different authors, and was infest by several sasines, and the Lady is infest in the same manner; whereas, the Earl of Marr has only but one sasine for all, which can be extended no farther than the particular parcel of lands, in which infestment was taken, especially seeing there is no union or erection into a barony. *Answered* for the Earl of Marr, That he was infest by the same superior, and after the same manner that the Earl of Kincardine was infest, who, being the common

author, the Lady could not quarrel his right; and the Earl of Kincardine's charter bears an express warrant, that one infestment should be sufficient for all the different acres; and, upon these grounds, the Earl of Marr did obtain decret of removing against the Lady *in foro*, which the Lady has homologated, by accepting of a tack from him of the lodgings, yards, and parks for a year. *Replied*, That the Earl of Kincardine was infest, holding of the King, by a mistake, seeing now it appears that the lands hold burgage, and the Lady has adjudged the disposition made to the Earl, her husband, from the Earl, her son, upon which she is infest by the town of Culross, and so has completed her right, by infestment from the right superior; and, when the Earl of Marr obtained a decret of removing, the Lady did not know that the lands were burgage lands, and the writings, by which she instructs the same, are but newly come to her knowledge, being found in the charter chest which was consigned in Sir Alexander Gibson, the Clerk's hands; and, upon that ground, she did raise a reduction of the acts and decreets, which she repeated, and the tack was only for a year; and so, being now expired, it cannot pre-judge the Lady. THE LORDS found, that, during the years of the tack, the Lady could not quarrel the Earl of Marr's right, upon any right that she had since acquired; and found, that the sasine taken was only sufficient for acres lying contiguous, and holding of the same superior.

Sir P. Home, MS. v. 2. No 913.

1711. July 5. BESSEY BENNET, &c. against JAMES SCLANDERS, &c.

BESSEY BENNET and JAMES SANDS, her first husband, being infest in an annualrent of L. 48, out of some tenements and burger acres in Culross, belonging to the deceased John Sands, upon a precept of sasine in an heritable bond for the principal sum of 1200 merks, granted by John Sands to James, his eldest son, and Bessey Bennet, his spouse, the longest liver of them two, in liferent, and to the children of the marriage, in fee; Bessey Bennet and Mr William Drummond, her present husband, for his interest, craved to be preferred in a competition of John Sand's Creditors.

Alleged for the other Creditors, *imo*, Bessey Bennet's infestment is null, not being given by one of the Bailies of the burgh, and common Clerk thereof as such, upon resignation; in the terms of the act 27th, Parl. I. James VI. and Young against Town of Montrose, 15th Dec. 1629, *voce* SUPERIOR and VASSAL; but a base infestment, granted only by a Bailie of the burgh, as Bailie in that part, and the Clerk as a common notary, upon a precept of sasine from the granter of the heritable bond, to be holden of himself blench; whereas, by a long tract of custom, a precept of sasine is never in use to be inserted in dispositions of burgage lands, but only a procuratory of resignation: *2do*, Suppose base infestments in burgage lands could be sustained, yet this cannot;

No 14.

A base infestment of annualrent in burgage lands, given by a Bailie of a burgh, as Bailie in that part, and the Clerk as a common notary, was sustained.

A liferent infestment in burgage lands, upon a precept of sasine in an heritable bond, to be holden blench of the granter, was sustained.