

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.

No 14. because not recorded in the books of the shire, or general register, but in the Town-clerk's books, which are only a proper register of sasines, given to be holden burgage upon resignation in the Bailie's hands, as representing the community.

*Answered* for Bessey Bennet, The act of Parliament, in King James VI.'s time, dischargeth private infestments to be given by any other than the Bailies and Clerks of the burgh, as being a casualty due to them; who cannot complain for being deprived thereof, when they voluntarily give sasine upon the granter's precept. The decision, 15th December, 1629, relating only to the tinsel of superiority, hath no contingency with the point. *2do*, It is ridiculous to assert, that any infestment within burgh, whether base or not, should be registered in the shire, and not in the town books. *3tio*, Whatever might be pretended for transmitting the property of burgage tenements by public resignation, nothing could hinder a servitude upon these to pass by a base infestment; especially considering that this is only a temporary right of liferent provision, and the precept of sasine was executed by the Bailie and the Clerk, and recorded in the town Court books, in the terms of the act of Parliament.

THE LORDS sustained the infestment in favour of Bessey Bennet.

*Fol. Dic. v. 1. p. 470. Forbes, p. 517.*

1740. July 3.

MARQUIS OF TWEEDDALE *against* The TOWN of MUSSELBURGH.

No 15.

It was laid down, as a proposition certain in law, though there was no occasion to give a direct judgment upon it, that an original charter, erecting a burgh, requires no sasine, because there is no person in being at the time who can receive it.

*Fol. Dic. v. 3. p. 317. Kilkerran, (SASINE.) No. 1. p. 503.*

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#### SECT. IV.

Method of obtaining Infestment by an Heir.

No 16.

HOME of Renton *against* JOHN STUART.

A SUPERIOR being charged to enter one to his predecessor's lands; if he, after the charge, denude himself, the letters, notwithstanding, will be found orderly