1752. *February* 7. CLARK and WARDEL, CREDITORS of YOUNG, Competing.

No. 28.
The same subject.

IN the case observed *supra* 17th July 1741, Duke of Roxburgh *contra* Hall, the Lords repelled the objection to a sasine wrote book-ways, that the notary's docquet did not specify the number of leaves, as in express words is required by the statute 1686, authorising sasines to be made out in that form, in respect of an attestation from the keeper of the register, and of several writers to the signet, that there were more sasines that laboured under the same defect, than there were sasines in terms of the statute, and of the danger that might ensue by annulling the sasines for a defect which in practice has been so general; but declared they would make an act of sederunt reviving and enforcing the statute.

The like objection was now made by Clark to Waddel's sasine on his charter of adjudication, and which could not be made in a case more favourable for the objector, as all he proposed by it was that he might not be excluded from a *pari passu* preference, as not within year and day of the first effectual adjudication; and the objection was farther enforced from this, that what prevailed with the Lords to sustain the sasines in the Duke of Roxburgh's case was that the Duke's sasine was of an old date, long before the 1730, in which year the objection was first made in the question between Sir James Stewart and Lady Castlehill, and that the attestations of the keeper and writers bore, that preceding the making the objection in the said year 1730, the practice had been, as has been said, but that the year 1730, the practice had been conform to law, which therefore can afford no aid in support of the sasine in the present case, which is of date in 1748; especially when it is added, that an attestation was now produced under the keeper's hand, that ever since the Duke of Roxburgh's case, the directions of the statute had been observed; and from these considerations it was urged, that it was no good argument for supporting the present sasine, that the act of sederunt proposed in 1741 had not yet been published, which was what the defender relied on.

Nevertheless, the Lords "Repelled the objection in this case also," but resolved that they would forthwith make their act of sederunt, and named a committee for that effect.

Fol. Dic. v. 4. *p.* 264. *Kilkerran, No.* 8. *p.* 507.

SECT. VII.

Infeftment on a Personal Right.—Sasine on a Precept of CLARE CONSTAT.—Infeftment in a Right of Annual-rent, taken on a Precept in a disposition of the Property.

1688. *November* 18. STARK *against* KINCAID.

No. 29.

STARK pursues Thomas Kincaid for reduction of the right of a tenement acquired by his father, by apprysing in favour of himself and his heirs whatsomever, on this reason, that by the contract of marriage betwixt his father and mother, the conquest during the marriage is provided to the heir of the marriage, and that he is heir of the marriage, and infeft in the tenement by the magistrates of Edinburgh as heir of the marriage, in which tenement his brother as heir of line was infeft, and was denuded. The defender alleged no process upon the pursuer's sasine, because it was null, for albeit there be a clause in the contract of marriage, providing the conquest to the heirs of the marriage, yet it is merely personal, and could be no ground to infeft the heir of the marriage, unless his father had been infeft, and his heirs of the marriage.

The Lords found this sasine null, and would not sustain process thereon.

Stair, v. 2. p. 802.

1739. *November* 9. PURDIE *against* LORD TORPICHEN.

No. 30.

The exception of precepts of *clare constat* in the 35th act of the parliament 1693, was found to be absolute, and that such precepts became ineffectual, not only where the receiver, but also where the granter died before taking sasine thereon, though still such precept or sasine was understood to be a title of prescription. But when the obtainer of a precept of *clare constat*, who had taken his sasine after the superior the granter's death, had conveyed the lands to a singular successor, who had obtained from the succeeding superior many years thereafter a confirmation of all rights, titles, and securities, in respect the obtainer of the said precept of *clare* was then in life, although the confirmation was only in the foresaid general terms, the same was found to be effectual to the purchaser, and not challengeable by the heir of the ancient vassal, predecessor of the obtainer of the said precept. This confirmation was considered as of the same effect as if the superior