

APPENDIX.

PART I.

SASINE.

1752. February 7. CLARK against WADDEL.

KILKERRAN's report of this case is No. 28. p. 14333. The following, from the Faculty Collection, had been omitted.

In a competition of the creditors of Summerhouse, Clark *objected* to Waddel's sasine, that it was null by the act 17th Parl. 1686, because the attestation of the notary did not narrate of what number of leaves the sasine consisted.

Answered for Waddel: *1mo*, This attestation is not an indispensable solemnity; for that the statute does not declare the omission of it to be a nullity.

2do, All the pages of which this sasine consists are signed both by the notary and the witnesses, so that no leaf could be foisted in, nor the tenor of the sasine altered: In this manner has the Court constantly interpreted the 15th act Parl. 1696, *allowing securities, &c. to be written bookways*, which is conceived in the same terms with the said act 17. Parl. 1686; for, in the cases Hamilton against Cairnhill, November 21, 1710, No. 311. p. 17028. and Watson against Durham, December 12, 1728, (not reported) the objection, that the number of pages was not mentioned in the last page, was repelled, because there was no possibility of interpolation.

3tio, et separatim, The attestation of the number of leaves had been omitted by the uniform practice of all notaries, until the year 1730, when this objection was moved, in the case Lady Sinclair against Sir James Stewart; nor was the contrary custom fully established in the year 1741, when a question similar to this occurred in the case of the Duke of Roxburgh, No. 27. p. 14332; in which case the Lords, "In consideration of the practice, and the great and general mischief that might ensue to the lieges, if the objections made to the sasine were sustained, repelled the objection, and sustained process." It is

No. 1.

Whether it is a nullity that the notary's attestation does not mention the number of leaves?

No. 1. true, that the Lords resolved to enforce the observance of the said statute 1686 by an Act of Sederunt; but this act has never yet been made; and as this case is the same with that of the Duke of Roxburgh, the like judgment may be expected.

Replied for Clark: *1mo*, If a form established by a statute may be omitted without incurring a nullity, that statute may at all times be eluded.

2do, The erroneous practice of notaries in former days, cannot afford any argument in defence of a sasine dated in the year 1748; when it is considered, that from the year 1730, when this objection was first moved, the custom began to be reformed; and that ever since the 1741, the general practice of notaries has been agreeable to the statute, as appears from a declaration signed by the deputy-keeper of the register of sasines at Edinburgh.

3tio, The case of the Duke of Roxburgh against the Feuers of Kelso is not in point; for the persons who objected to the Duke's sasine did not pretend any right to the subjects contained in his charter and infeftment; and, besides, that sasine had been a title of possession for upwards of forty years, and was dated at a time when notaries universally omitted the solemnity in question; nor could there be any suspicion of fraud in that sasine; for the beginning of the precept was ingrossed in the first page, and the end of it in the last.

“The Lords repelled the objection to the sasine, in respect of the general non-observance of the act 1686, with regard to enumerating the pages or leaves of sasines written bookways; as appears in the case betwixt the Duke of Roxburgh and John Knox and Andrew Hall, marked in the book of Sederunt; and that the said act has not yet been regularly observed.”

For Clark, *R. Craigie*.

For Waddel, *A. Lockhart*.

Reporter, *Woodhall*.

D.

Fac. Coll. No. 2. p. 3.

1777. *January 21.*

JAMES SCOTT of Scalloway *against* JOHN BRUCE STEWART of Simbister.

No. 2.

A sasine taken not on the lands, but in consequence of a dispensation from a subject superior, found null.

THE Sinclairs of Scalloway had been, in the seventeenth century, proprietors of large estates within the lordship of Zetland, which were feudalized by charters from the Crown in favour of that family.

In 1667 and 1678, wadsets were granted of certain of these lands, by the then proprietors James and Arthur Sinclairs, in favour of Lawrence Stewart of Bigtown.

The estate of Scalloway, including the lands so wadsetted, was, in 1677, adjudged from Arthur Sinclair by James Smelholm. He obtained a charter of adjudication, and was infeft, thus acquiring the right of reversion to the wadsetted lands; which came by progress into the person of James Scott.