

1790. *March 10.*SIR WILLIAM DUNBAR, Bart. and Others, *against* GEORGE SUTHERLAND.

GEORGE SUTHERLAND claimed enrolment as a freeholder in the county of Caithness, at the Michaelmas meeting held on 30th September 1789.

In support of his claim, Mr Sutherland produced, among other writings, an instrument of sasine, with an attestation on the back of it by the keeper of the record in the county, bearing, that it had been presented on 29th September 1788, and recorded on the same day. Mr Sutherland was accordingly enrolled.

It was afterwards discovered, that the instrument of sasine had not been ingrossed in the register for several days after 29th September 1789, and that it could not be marked in the minute book directed to be kept by 1693, cap. 14. no such book being kept in the county of Caithness. In a complaint, therefore, founded on the circumstances already mentioned, Sir William Dunbar and others, freeholders in the county,

Pleaded; By act 16th Geo. II. cap. 11. it is provided, That 'no purchaser or singular successor shall be enrolled till he be publicly infeft, and his sasine registered, or charter of confirmation expedite, where a confirmation is necessary, one year before enrolment.' Thus, the recording in this instance not having been performed for a full year before enrolment, the judgment of the freeholders was manifestly erroneous, and ought to be set aside.

The statute of 1617, cap. 16. evidently required, that the sasine or other writing should be actually transcribed into the record, the attestation on the back being only intended to establish the claim of reparation against the keeper of the record, if the business of registration was not conducted with sufficient accuracy. This was the opinion of Lord Stair, who justly observes, that no purchaser could be secure if a different rule were to be adopted. And even although this might have admitted of a doubt, especially after the enactment of 1686, cap. 19. the subsequent statute in 1696, c. 18. has declared, in the most express terms, that 'no sasine or other writ or diligence appointed to be registered, shall be of any force or effect against any but the granters, unless it be duly booked and inserted in the registers;' Stair, b. 2. tit. 3. § 21.

It is true, that where a sasine has been regularly presented to the keeper of the records, and by him duly entered in the minute-book, as required by 1693, cap. 14. a claim of enrolment founded on it has been sustained, although some delay has occurred in transcribing it into the record. As this minute-book, which is open to public inspection, contains a general description of the lands, and as the instrument of sasine or other document is retained in the hands of the keeper of the record till it is engrossed *ad longum*, such a determination can be attended with little loss. Great care, however, must be taken, that by a gradual infringement of the general rule, the public security provided for by the records may not suffer a fatal injury. If a sasine were to be sustained,

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Found that the date of presenting sasines to the keeper of the register is to be reckoned the date of registration, though they should not be engrossed in the register for some time after.

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though not marked in the minute-book, nor to be found in the record, no singular successor could be safe; and persons might be admitted to the privilege of voting, who have no real interest in the welfare of the community, although, in order to prevent such undue enrolments, a previous publication of the infetment for so long a period has been made necessary.

Answered; General laws cannot be framed in such a manner, as to be precisely applicable to the circumstances of every case. It is therefore the province of courts of justice so to construe these enactments, as to adapt them to common use. Where such a construction has been given, by the usage of the country, and especially where it cannot be attended with any loss, this rule appears to be highly expedient and just. In giving effect to the statutes respecting registrations, it has been often followed. By the enactment of 1617, it is required, that the sasine or other writing should be engrossed within forty-eight hours after it is presented to the keeper of the register; yet, as in the case of many sases being given in at the same time, this cannot be done, it has been held sufficient if the presentation of it has been duly notified in the minute book. So likewise in the case where it has been certified in the minute book, that the writing was recorded on a certain day, it is not allowed to prove that the booking took place at some after period; this being agreeable to the common practice, and attended with no inconveniency, as the keeper of the register retains in his possession the sasine or other writing, for the information of those who may wish, in the meantime, to examine the record. In the same manner, in a case where no minute book has been kept, it must be enough to shew, that the sasine was duly presented for publication, as is done by the attestation on the back of the writing itself, and that the deed continued in the hands of the public officer, until it was regularly engrossed; *Wight on Elections*, 4to edit. p. 221.

THE COURT were much divided in opinion, and the question was at length determined by a very narrow majority.

After advising the petition and complaint, with answers and replies,

“ THE LORDS dismissed the complaint.

Act. Honyman, Tait, et alii. Alt. Dean of Faculty, et alii. Clerk, Mitchelson.

Fol. Dic. v. 3. p. 423. Fac. Col. No 126. p. 244.

* * * A similar decision was pronounced, 9th February 1768, Sir Alexander M'Kenzie and others against M'Leod of Cadboll and others; and in a case, Earl Fife against Gordon, &c. 8th July 1774, the registration of a sasine was sustained, though the entry in the minutebook was not signed. *See APPENDIX.*