Interlocutors affirmed, with costs.

Robert Ainslie, W.S., *Appellants' Agent.*—Wotherspoon and Mack, W.S., *Respondent's Agents.*

JULY 6, 1855.

DONALD MACLAINE, &c., *Appellants*, *v.* DONALD MACLAINE, ARCHIBALD BORTHWICK, H. G. WATSON, and Others, *Respondents.*

Sasine, Registration of—Grounds and Warrants—Statutes 1617, c. 16; 1693, c. 14.

HELD (affirming judgment), *That the date of presentment of a sasine for registration is the date of its registration, and the record of the date of presentment is the minute book of the Register of Sasines.*

The following objections, in a reduction improbation, were stated to the validity of the registration of a sasine:—1. *That the month and day of the month, and the year of the sovereign's reign, were not written in the body of the record, but were entered as a marginal note, to which no separate subscription was appended.* 2. *That the name of the party taking sasine, "Maclaine," was entered in the minute book of the register as "Maclean."* 3. *That the person presenting the sasine, the registration of which was objected to, having, at the same time, presented several other sasines for registration, all of which were entered on one and the same page, the entry of the sasine in question was not separately subscribed, but only one signature was affixed by the keeper, and the party presenting, to the whole writs presented.*

HELD (affirming judgment), *These objections were properly repelled.*[1]

On appeal, it was pleaded that—1. The instrument of sasine following upon the charter of resignation of 1785, dated the 15th October of that year, and appearing *ex facie* of the register to have been recorded upon the 16th December 1785, *i. e.*, more than 60 days beyond its date, was consequently null and void. 2. It was not legally recorded, in respect the portion of the instrument which sets forth the month and day of the month, and the year of the king's reign in which it is alleged to have been expede, was not inserted in the register, but appears in the form of a marginal note, not subscribed or authenticated. 3. It was not legally registered, in respect its date was not set forth in the entry in the minute book, and the party who presented it for registration, and the keeper of the register, did not sign the entry in the minute book, as required by statute, but only subscribed at the foot of the page of the minute book where it appeared, and after the entry of six other sasines. 4. It was further unavailing, in respect the proper and true name of "Maclaine" does not appear in the minute book, while another and a different name, "Maclean," is substituted for it.

The *respondents* supported the judgment on the following grounds:—1. Because the Court of Session correctly gave effect to the entry in the *minute* book of the Register of Sasines as the legal evidence of the *date* of registration, and that entry proves that the instrument of sasine was duly recorded on 10th December 1785, being within 60 days after 15th October 1785, the date of the sasine. 2. Because, although in transcribing the said instrument of sasine the record keeper copied part on the margin, there was no ground for holding the marginal writing to be a part of the record.

Lord Advocate (Moncreiff), and *Baggallay*, for the appellants.—The whole system of registration in Scotland is matter *positivi juris*, and this question turns on the construction of a series of statutes. The substance of the question is—whether, under those statutes, where the minute book differs from the record itself, the one is to be believed in preference to the other. Under the Statute 1617, c. 16, it was necessary to prefix the date of recording the instrument, for unless it had been so, it could never be ascertained whether the registration had been in time. Such has accordingly been the invariable practice since the year 1617. The date as prefixed, therefore, must be treated as part of the register. It was not till the Statute 1693, c. 14, that the necessity of a minute book was established, but even then the record itself was in no way superseded. It still continued essential to have the date of recording prefixed to the engrossment. The minute book was intended merely to supplement and aid the register, not to derogate from it. It seems, therefore, an obvious conclusion, that where these two parts of the registry conflict, the principal register must be entitled to credit. There is no direct authority on the subject. Two election cases, *Adam* v. *Duthie*, 19th June 1810, F. C., and *Drummond* v. *Ramsay*, 24th June 1809, F. C., contradict each other, and, perhaps, neither is entitled to much weight. There

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[1] See previous report 14 D. 870; 24 Sc. Jur. 545. S. C. 27 Sc. Jur. 550.

are two recent cases, however, which are inconsistent with the view maintained by the respondents, viz., *M'Queen* v. *Nairne*, 2 S. 637; *Dennistoun* v. *Speirs*, 3 S. 285. Though, perhaps, the statutes, in express words, do not require the date of recording to be entered, still the uniform custom for two and a half centuries ought to have the same effect.—Ersk. i. 1, 45. (The other objections stated in the printed case were not insisted on at the bar.)

Solicitor-General (Bethell), and *Anderson* Q.C., for the respondents, were not called upon.

LORD CHANCELLOR CRANWORTH.—My Lords, this is a case that I think can admit of no question whatever. The Statute of 1617 only says that the deeds shall be registered within 60 days. Whether this deed was registered within 60 days is a question of fact. There is nothing that says that you are to take that which is written by the officer on the deed when registered, as conclusive of the fact of the date at which that deed was registered; and that being so, all that the Court had to decide was the matter of fact—was this deed registered within 60 days? Now nobody can doubt that fact, because it appears upon the minute book of the General Register of Sasines, which is kept regularly, that it was brought for registration in the month of December, and registered upon the 10th of December. That is quite certain, as a matter of fact. And that of which the parties have to complain is, that by a clerical error the clerk has written "6" instead of "0." But it is stated that this entry immediately follows one of the 9th of December, and is followed by other entries that were made on the 10th of December; so that the matter is clear beyond all possibility of controversy.

The Statute of 1617 requires that a deed should be registered within 60 days, and this has been so registered. If the legislature should be of opinion, that that which is complained of is an omission in the act which would go far to do away with the advantages that the act contemplated, the legislature must remedy that. I cannot agree with what was suggested at the bar, that that must be done by an Act of Sederunt, requiring the registration should be within 30 days, when the legislature has said it shall be within 60 days. As at present advised, I do not think that there is any evil to be remedied, but if there is any evil it must be remedied by the legislature. All that the legislature has required to be done has been done in this case. I therefore move your Lordships that this interlocutor be affirmed.

LORD BROUGHAM said he did not hear the whole of the argument, but from what he did hear, he had no hesitation in agreeing with the LORD CHANCELLOR.

LORD ST. LEONARDS.—My Lords, I confess that it appears to me that there is no question in this case. The minute book is right, and the certificate of registration is right, and the mistake is in the engrossment, which manifestly shews a clerical error on the face of it. For the examination of the deed shews at once that the error arises out of a flourish of the pen; and this entry comes in the order of succession between entries of the 9th and the 10th. The act of 1693, as I read it, expressly makes the minute book govern the date of registration. The other act does not require the date to be inserted in the engrossment; and in the absence of such requirement on the part of the legislature, and with that minute book introduced for the express purpose of governing the date, and also with the practice, which the House cannot doubt, after what is stated in the printed cases, to have been uniform, of regarding the entry in the minute book as governing the date, I feel no hesitation in holding that this deed was registered within 60 days. I therefore think that the appeal should be dismissed, with costs.

Interlocutors affirmed, with costs.

Appellants' Agents, Shand and Farquhar, W.S.—*Respondents' Agents*, Hunter, Blair, and Cowan, W.S.

JULY 16, 1855.

JOHN WRIGHT, *Appellant*, v. JAMES SCOTT (River Clyde Trustees), *Respondent.*

Statute—Construction—River Clyde Trust—Power to erect sheds near wharf—*The Clyde Trustees having power to improve and widen the river, and make wharves, and to acquire land compulsorily for the purpose, purchased from W. a piece of land on the river bank, and obtained an absolute disposition subject only to a right in W. to lay pipes under the soil. The trustees proceeded to turn the land into a wharf with sheds adjoining in which to store goods.*

HELD (affirming judgment), (1) *That W. had no right to prevent this, or to set up the Clyde local statutes as restricting the right of the disponees.* (2) *Even looking at the statutes, the power to make wharfs included the right to build sheds on the quay as adjuncts thereto.*[1]

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[1] S. C. 27: Sc. Jur. 569.