tary, than the Sheriff-clerk; sasine within burghs to be given by others than the Bailies; these may be called null of the law, as done against the expressed law, but such writs or instruments of sasine that are not against the expressed law, and are authentic of themselves, they can never be called null of the law, sed veniunt annullanda ordinaria via et modo; and also of the law, this action being intented in a removing, et in recuperanda possessione, prius terminandum est possessorium, quam petitorium L. 13, C. De rei vindicatione; et ait Bald in L. Unica, C. Uti possedetis, quod finis retinendi possessorii est initium petitorii, et in retinenda possessione sufficit titulus putativus et titulus bonæ fidei; et is dicitur bona fide possidere, qui nec vi, nec clam, nec precario possidebat, et is qui ita possidet non debet a possessione sua removeri nec inquietari, nisi proprietate prius discussa, prout in lege unica et titulo unico, C. Uti possidetis; and so the said sasine stood unreduced with the long continual and uninterrupted possession, and behoved to stand at least as *titulus putativus*, and could never be taken away in this judgment possessory, but behoved to be taken away in the judgment petitory, and by way of reduction; and it was never seen, in any time past, that a title with so long possession, was taken away by way of exception. The matter being, with long continuance of time, reasoned at the bar, and among the Lords themselves, the LORDS pronounced *definitive* that the exception was not proved, and that the said sasine might be taken away by nullity of exception; *licet bona pars*, &c. No 2.

Colvill, MS. p. 351.

1582. *February.* LADY ESSILMONT *against* Her TENANTS.

No 3.
Effect, to bar removing, of a deed by a wife, alleged to be *donatio inter virum et uxorem.*

THE Lady Essilmont sometime Countess of Errol, pursued the Tenants of —— to flit and remove. It was *answered* by the Tenants, Se non debere migrare et removere se, quia the said Lady bound and obliged her, to her husband, ante suum obitum et in tempore nuptiarum, that in case she, after his decease, intromitted with his goods or gear, she should renounce and overgive all right that she had to the said lands, for her lifetime, as it was subscribed; and that she had, *de facto*, intromitted. It was *alleged*, That this bond made between my Lord her husband and her, de jure non valuit, quod fuit donatio inter virum et uxorem, quæ regulariter prohibetur. To which it was *answered*, That donatio hæc morte et obitu maritu confirmatur; and so, albeit it was revocable during the lifetime of the husband and wife, yet by the decease of the Lord and husband, it was ratified and approved. The which the LORDS found relevant. 2*do*, It was *alleged*, That the bond of renunciation made by the woman, behoved to have a declarator, and could not be admitted *via exceptionis*. THE LORDS found, that in so far as it was alleged that she had intromitted with the gear, that the deed's self was sufficient declarator, and where the deed is followed, there mistered no declaration, *vel ubi res devenit in actum.*

Colvil, MS. p. 353.