

1684. *February.*MURRAY *against* HOPE.

No. 17.

IN an action of pointing the ground, at the instance of Sir Patrick Murray against Mr. Archibald Hope, the Lords found a sasine of an annual-rent null, because it did not bear the delivery of the symbols contained in the precept, viz. the ground of the lands and a penny money, as use is; but only, in general, that the bailie had given state and sasine, conform to the tenor of the precept.

*Fol. Dic. v. 2. p. 363. Sir P. Home, MS. v. 1. No. 578.*

1743. *December 21.* MARGARET MACKENZIE *against* JANET BUCHANAN.

No. 18.

WILLIAM BUCHANAN of Sound, anno 1697, granted an heritable bond for £1900 Scots, on his estate, on which sasine followed on the precept. In an action of pointing the ground, at the instance of an assignee, it was objected by an adjudger in possession, that the sasine was void, as disconform to the precept, which runs in the following terms :

Objection to a sasine, that it was not conform to the warrant or precept.

“ Attour to my lovits, I will and require you, that ye pass, and deliver heritable state and sasine, actual, real, and corporal possession of the said annual-rent of £114 yearly, to be uplifted forth of, &c. to &c. by a deliverance of a penny money, in name of the said annual-rent, and earth and stone of the ground of the said lands, as use is, redeemable always,” &c.

Whether duly recorded by the proper officer?

The bailie executed the precept of sasine thus, “ Gave and delivered heritable state and sasine, actual, real, and corporal possession, of all and hail the lands of, &c. to &c. by deliverance of earth and stone of the ground of the said lands, and a penny money, in name of the said annual-rent, as use is, after the form and tenor of the heritable bond, and precept of sasine, in all points.”

The objection, therefore, to the pursuer's sasine, was, That the precept was a warrant to give sasine of one thing, viz. a certain annual-rent to be uplifted furth of the said lands; and sasine is actually given of another thing, viz. of the lands themselves, and is therefore void and inept, consequently cannot maintain this action of pointing the ground; nor does it remove the objection, that the sasine bears the proper symbols to have been delivered, that were fit and suitable for giving an infeftment of annual-rent, in these words, “ By deliverance of earth and stone of the ground of the said lands, and a penny money in name of the said annual-rent, as use is, after the form and tenor of the said heritable bond, &c. in all points;” for the question is, What was it the bailie gave and delivered by means of these symbols? The answer to which is plain from the principal words of the instrument of sasine, which recite the *res gesta* to have been, that the bailie gave and delivered heritable state and sasine, of all and hail the lands of, and hail parts, pendicles, &c. thereof;—so that he erred in the substance, by de-