

and subscription manual of party;—it was *replied* be the said Galloway, That it was use and custom of the said Burgh, past memory of man, that all reversion's made in form of instrument made be the common clerk of the town; were as sufficient as any other reversion; whilk reply was admitted be the LORDS, to the said Galloway, Provost.

Fol. Dic. v. 1. p. 204. Maitland, MS. p. 119.

1623. July 10. EDMISTON of Wolmet *against* _____.

IN this action of Edmiston of Wolmet *contra* _____, whereof the title of this pursuit was a sasine of a tenement of land within Leith, which being quarrelled by the defender upon nullity, because it was not registrate in the books of the clerk-register, conform to the act of Parliament in anno 1617;—the LORDS repelled the allegiance, and sustained the sasine, because it was of a tenement within Leith; which albeit it was not within a burgh-royal, and holden burgage, that thereby it might have the privilege of the exception contained in the act of Parliament, which is conceived in favours of burghs-royal; yet in respect of the consuetude and perpetual custom of giving of such sasines by the bailies of Edinburgh, and that never any was in use to be insert in the fore-said register, and of the dangerous consequence whereby many of the subject's right would fall if this nullity should have place; therefore the LORDS sustained the sasine, but nevertheless they declared, that if the excipient would allege that it was, and is, the custom in Leith to registrate sasines in that register, that they would sustain the allegiance.

Clerk, Hay.

Fol. Dic. v. 1. p. 203. Durie, p. 72.

1708. February 7. YOUNG *against* CALDERWOOD.

IN a competition for the rents of a house in Edinburgh, betwixt Sir Thomas Young and Calderwood of Pitteddie, it was objected, that Sir Thomas's sasine was null, because in the resignation made in the magistrates' hands, as the Queen's commissioners, the symbol of surrender is made to be tradition of earth and stone, which is the symbol proper only in sasines, whereas their fixt and known symbol by our stile, past all memory, is by staff and baton; and it is of very dangerous consequence, to change our ancient stiles, especially having no such warrant by the procuratory. *Answered*, It is confessed to be an error and mistake, but which has so generally prevailed, that many others have run into the same error; and to annul them all at one stroke may be very prejudicial to the lieges; for whatever the Lords may do in time coming, yet for

No 20.

taken in the town clerk's hands, the Lords sustained the same, altho' regularly, reversion's cannot be valid, unless subscribed by the party.

No 21.

An erroneous practice by which the magistrates of Edinburgh gave sasine of subjects in Leith, did not annul the sasine; on account of the constant custom, and the danger to many other sasines if the nullity should take place.

No 22.

A sasine by magistrates, with earth and stone, instead of staff and baton, was sustained on account of the custom; but the Lords declared they would hold any such future error to infer nullity.

No 22. bygones, *error communis* may so far excuse such an error. THE LORDS having tried at the town clerk, and having found there were many in the same condition, they sustained the sasine and resignation, and repelled the nullity; but resolved to make an act of sederunt discharging that practice in time coming, under the pain of nullity, in all competitions with other creditors, more formally infest.

Fol. Dic. v. 1. p. 203. Fountainball, v. 2. p. 428.

SECT. V.

Process carried on in a wrong form.

No 23.
A decree of lining given by the provost and bailies of Dumfermline was reduced, because the brieve was not proclaimed upon 15 days, nor a precept directed upon a claim given in by the purchaser of the brieve against the special parties having interest, nor any formal order of process kept, tho' it was alleged to be conform to the ordinary custom and manner of proceeding in that burgh.

1629. February 14.

WRIGHT against STIRK.

IN a reduction of a brieve of lining or limiting, and decret conform thereto, given by the Provost and Bailies of Dumfermline, to whom the brieve out of the chapel of Dumfermline was directed to that effect; this reason of reduction was found relevant, and the brieve was reduced, because the brieve was not proclaimed upon 15 days, not a precept direct upon a claim, given in by the purchaser of the brieve against the special parties, having interest in the lining of the tenement therein contained, for summoning them thereto, nor no formal order of process kept; which reason was found relevant, albeit the defender contended, it was not relevant in this case of brieves of lining, which hath a summary proceeding; and that by the consuetude in the burgh of Dumfermline, no other claim is given in but summary trial taken betwixt the parties; likeas the parties are summoned by the brieve and warrant thereof; which exception was repelled.

Act. Mowat.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 1. p. 204. Durie, p. 425.

No 24.

Decree subscribed by the commissary in place of the clerk sustained, because of the custom, but

1631. February 10.

A. against B.

THE Commissary of Brichen having pronounced a decret betwixt two parties, which being extracted, was subscribed by the Commissary, who was judge thereto, and not by his clerk, and therefore was quarrelled as null, seeing these being two distinct offices, as the clerk could not be judge, no more could the judge be clerk; for, as the judge could not sit down and minute processes, and