

SASINE OX.

1594. January 2. SOMERVELL against L. of BALIVIE.

SOMERVELL, tenant to the Laird of Drumvey, pursued the Laird of Balivie for spuilzie of two oxen. It was excepted by the defender, That he ought to be *simpliciter* assoilzied, because, he being bailie constituted by my Lord Duke of Lennox to give sasine of the lands of Drumvey to the Laird of Kilbirnie, his vassal of the said lands, he had lawfully intromitted with the said sasine-oxen, as pertaining to him as bailie, conform to the general consuetude observed throughout all the realm. To this was answered, That if any sasine-ox he could acclaim, he behoved to seek it from the heritor of the land, and could not intromit with the poor tenants' gear, who was noways debtor to him, *attento maxime*, that he was not tenant to this Laird of Kilbirnie, who being only superior of the lands to Drumvey, he could not prejudge the tenant by his sasine ox, more than the profits of the said blench-lands could be worth to him, being naked superior. For, if this had place, superiors changing, and making many resignations, and giving new infestments, might so exhaust the vassals and their tenants by their sasine-oxen, that it would force them to leave the ground. The Lords, having considered that it was an old custom, generally observed throughout all the realm, they thought hard to make it spuilzie; and, on the other part, thinking it more perilous to authorise an evil custom by their sentence, they found the bailie's intromission wrongous, to take two oxen, as bailie, for giving sasine to him who was but naked superior, and had no profit of the land. It was found, by a majority of the Lords, That the by-past custom had been, through all the realm, to take for every sasine a sasine-ox, if the land had been a husband-land, or more, which they thought extended to 27 acres of land. Some of the number thought, that no sasine-oxen should be, but when an heir entered to his predecessor upon a precept of the Chancery. Albeit they alleged, that the bailie had committed wrongous intromission.

No. 1.

This prestation has no warrant in law, nor by act of Parliament, but only by custom.

Fol. Dic. v. 2. p. 364. Haddington, MS. No. 464.