

1773. *July 20.* GORDON of TECHMURIE *against* BRODIE, &c.

MR Gordon of Techmurie was infest in the Mill of Longhill. His sasine bore that infestment was given him upon the said 30th of September 1771, but no such date was mentioned in the beginning of the sasine. On the contrary, it bore that the whole was done upon the 1st of October 1771. The Lords at first sustained the objection, but, upon advising a reclaiming petition, setting forth the danger of voiding a sasine upon objections so critical, they altered, and repelled the objection.

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GORDON of HALLHEAD *against* BRODIE, &c.

IN a dispute betwixt Gordon of Hallhead against Brodie and Others, it was said that no proper sasine was produced for Mr Gordon; *primo*, Because, though the lands, in which sasine was given, were discontiguous, yet the instrument did not bear that sasine was given upon each of them, *respective* and *successive* after each other; and *secundo*, The sasine did not bear that earth and stone was given of the lands, but for them. The Lords repelled both objections.

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1762. *March 3.* LIVINGSTON *against* LORD NAPIER.

IN a sasine, produced in the case of Captain Livingston against Lord Napier, Alexander Livingston appeared as bailie, and John Bryce as procurator for James Livingstone. But, in the clause of delivery, infestment was given, *not* to John Bryce, but to John Burn. ANSWERED,—That this was a mere mistake in transcribing the name of the attorney, and was corrected and brought to a certainty in other parts of the sasine. Accordingly, the Lords sustained the sasine, and, on an appeal, the decree was affirmed.

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DOUGLAS of DOUGLAS *against* CHALMERS of LARBERT.

IN the case of Douglas of Douglas and Robert Chalmers of Larbert, the instrument of sasine set forth John Wilson's appearing as attorney for Robert Chalmers and John Crawford the liferenter and fiar, having in his hands the charter in favours of Mr Chalmers in liferent, and John Crawford in fee. These writings being delivered to the bailie, the instrument bore that he gave sasine to Mr Crawford, forgetting to mention Mr Chalmers; whereupon Wilson, as procurator for Mr Chalmers and Mr Crawford, for their respective rights of fee and liferent, took instruments. The objection was, that no sasine had been given to Mr Chalmers. And, at first, the Lords sustained the objec-

tion ; but, on a reclaiming petition, being sensible that the thing was actually done, and that the defect consisted merely in a blunder and inaccuracy of the writer, they repelled the objection, and sustained the sasine.

In all the above cases the Lords proceeded upon this principle, That, where it appeared, *ex facie* of the instrument, that the thing was done, and that sasine was in reality given, blunders or mistakes, in extending the instrument, ought not to annul the sasine. And accordingly, in many cases, sasines labouring under defects have been sustained both by the Court of Session and House of Peers, which, at a more early period of our law, especially before the introducing the register of sasines, would have been sustained.

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1778. August 6. SCOTT of SCOLLOWAY *against* BRUCE STEWART.

A SASINE produced in a process, Scott of Scolloway against Bruce Stewart of Symbister,—(which see Prescription,)—laboured under this objection, That sasine was taken only at one place, though the lands lay discontinuous. And the only union was, that the precept, which was by a subject, bore a warrant to give sasine at that place, in name of the hail other lands ; which the granter declared equally sufficient as if taken on each particular. It was said that here there was no proper union, nor clause of union, nor could there be, as no subject superior can grant a union ; and therefore the sasine was void and null. The answer made was a *communis* custom or error, in that part of the country, *viz.* in Shetland, and that, if the Lords annulled this sasine, they would annul a hundred more. The practice was common, and it had been introduced by the division of the lands, in that part, into numberless small discontinuous parts situated in different islands, &c. ; and besides, *post tantum temporis*, (for the sasine had been taken *anno* 1709, and possession on it ever since,) *omnia rite et solenniter acta* must be presumed. — December 1776, Lord Braxfield, probationer, who reported the cause, in the course of his trials, reported it as a cause of difficulty, but inclined to the last opinion. The Lords demurred, as well as he, and therefore pronounced the interlocutor mentioned,—(see Prescription.) But this day they altered, and found that the defender had produced sufficient to exclude ; that is, they sustained the sasine.

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1762. December 9. DOUGLAS of DOUGLAS *against* The EARL of SELKIRK, and DOUGLAS of DOUGLAS *against* DUKE HAMILTON.

To a sasine taken in the year 1707, wrote bookways, it was objected, that the same was void and null, the witnesses having signed only the last page, contrary to the statute 1686. The Lords repelled the objection.

They did the same, 19th December 1776, in the same cause, though against another defender, Duke Hamilton,—(see interlocutor in this cause.)