

1679. *November 19.* ARNOT and her SPOUSE *against* TURNER.

No. 26.

Sasine valid, though not taken in day-light.

MARGARET ARNOT being infeft in an annual-rent, effeiring to £10,000 out of the lands of Capledrea, granted by her father for her portion, and being thereupon in possession the space of 30 years, pursues a pointing of the ground. Comparence was made for Mr. Archibald Turner, as having right to a bond granted by Capledrea to Isobel Law, and an inhibition thereupon *in anno* 1663, against Capledrea; and thereupon alleges, that Margaret Arnot's sasine is null, bearing to have been *circiter horam nonam post meridiem*, whereby it behoved to have been taken under cloud of night, and so is no lawful act. It was answered, That though legal executions are required to be done in day-light, that all parties having interest may compare and protest; yet there is neither law nor custom requiring sasines to be done in day-light, more than the subscribing of writs, and delivering of goods. Neither can it be a circumstance of fraud or latency in this case, the infeftment being *in anno* 1638, and Margaret long in possession before any right or diligence done by Isobel.

“ The Lords found the sasine valid, though it had not been taken in day-light, nothing of latency or fraud being qualified.”

*Fol. Dic. v. 3. p. 364. Stair, v. 2. p. 708.*

1741. *June 4. & July 17.* THE DUKE OF ROXBURGH *against* HALL.

No. 27.

The notary's attestation not bearing the number of the leaves.

THE nullity objected to a sasine upon the statute 1686, c. 17. was sustained, That the attestation of the notary did not condescend upon the number of the leaves of the sasine, 4th June, 1741.

But upon a review, the Lords having examined the keeper of the register of sasines, and several writers to the signet, from whose declarations it appeared that a great number of sasines wrote book-ways laboured under the same defect with that here objected, that the attestation of the notary did not bear the number of the leaves; they, in respect of the danger that might ensue by annulling a sasine for a defect, which in practice has been so general, “ Altered their former interlocutor, and repelled the objection to the sasine;” but declared they would make an act of sederunt for reviving and enforcing the observance of the statute, 17th July, 1741.

*Fol. Dic. v. 4. p. 264. Kilkerran, No. 4. p. 503.*