

No. 3. grant an infeftment ; the apparent heir should first have been charged to enter, and if he refused, the next superior should have been required to enter the adjudger.

“ The Lords found, that the heritable bonds and writs in favour of the annual-renters and infefters being prior to the adjudications, the infeftments on the rights of annual-rents, though posterior to the adjudications and charges thereon, were preferable to the said adjudications.

Edgar, p. 41.

Arch. Stewart for the Adjudgers.

Alt. Ja. Fergusson.

* * Lord Kames' report of this case is No. 69. p. 2831. *voce* COMPETITION.

1725. *January 26.*

WILLIAM PRINGLE *against* DR. JOHN MURRAY of Cavens.

No. 4

IN a competition betwixt these parties, it was objected against a sasine of an annual-rent produced for Dr. Murray, that it was null, in respect that it bore not delivery of the proper symbol, but of earth and stone :

To which it was answered, That the sasine in question had been clad with possession for above 40 years ; and though it mentioned the delivery of earth and stone, yet it was said to be in manner and conform to the precept, which bore a penny money ; and in such cases the delivery of the proper symbol had always been presumed, particularly in that of Somerville against Somerville, 23d March, 1631. Sect. 3. *h. t.*

The Lords repelled the objection.

Lord Newhall, Reporter.

Mackenzie, Clerk.

Fol. Dic. v. 4. p. 263. Edgar, p. 157.

1729. *January.*

MARQUIS of CLYDESDALE *against* CREDITORS of MENZIES.

No. 5.

It was objected against an infeftment of annual-rent, that it was null, in respect that the sasine, instead of the ordinary symbol of a penny money, bore only the delivery of earth and stone. It was answered, That there is no statute fixing the symbol of sasines ; that the delivery of sym-

bols is only a formality to fix and ascertain the act of possession ; and if such a symbol be truly delivered, as may manifest the intention and deed of the parties, it seems to be a matter of indifferency what the symbol is, whether a penny money for annual-rent, clap and happer for mills, or earth and stone for lands; which last truly appears to be the proper symbol, instead of any other.

The Lords repelled the objection. See APPENDIX.

Fol. Dic. v. 2. p. 362.

No. 5.

1750. June

DEMPSTER against LADY KINLOCH.

IN the competition stated of this date, between these parties, No. 104. p. 10290, a special objection was made for the Lady to Dempster's preference on the teinds, that his infeftment was null as to these on this ground, that although the teinds were expressly disposed, yet there was no proper symbol for them, either in the precept or in the sasine, nor did the sasine bear that any heritable state of the teinds was at all delivered, but only that the bailie delivered earth and stone for the lands, clap and happer for the mill, and a penny money as use is.

To this one answer made might have been sustained, had it been true in fact, that the lands, teinds, mills, and fishings, were all erected into one barony, and a sasine at the principal messuage, or any other part of the barony, declared sufficient for the whole: After which erection, it was unnecessary to have different symbols for each subject so erected; otherwise it would follow, that a coble, a net, clap and happer, must be carried to the principal messuage, or other part of the barony, where sasine should be taken, which nobody would imagine.

But no such erection appearing, the other answer was, that where an infeftment of annual-rent is granted out of lands and teinds, a penny money, if the annual-rent is payable in money, or a handful of corns, if out of victual, is the proper symbol both for the lands and teinds; as the feudal right intended to be constituted is not in, or of the lands, but of an annual-rent.

But this was not satisfying; for in all sasines on annual-rent rights, it is necessary that there be a sasine by its proper symbol in the subject, out of which the annual-rent is payable; of earth and stone, where it is payable out of the lands, and of grass and corn, where it is payable out of teinds; insomuch, that though the Lords have on some occasions sustained a sasine upon a right of annual-rent, where there was a symbol of the subject out of which it was due, though no mention was made of a penny money, the proper symbol of an annual-rent, yet in no case has ever a sasine on an annual-rent right been sustained without a symbol of the subject out of which it was due.

But no interlocutor was given on this point, the Lady having been preferred upon another ground, as observed, *vocce* PERSONAL and REAL.

No. 6.

Stated, what symbols are necessary in a sasine of an annual-rent out of teinds, &c,

Kilkerran, (SASINE) No. 6. p. 505-