

No 402. *stat* flows only from a subject superior, whereas burgage lands hold of the sovereign, and the Bailie is not superior.

*Duplied* for the defenders, *Esto* there were a cognition in this case, as there was none, yet that would not alter the nature of the infestment from that upon a precept of *clare*, seeing the superior in that case takes likewise cognition of the obtainer of the precept his propinquity, *per authentica documenta*, yet that superior's assertion will not prove the fact against third parties, more than the Bailie's assertion (or rather the assertion of the clerk in the burgh) in the infestment of hasp and staple. In one respect it is true, that the Sovereign, and not the Bailie, is superior, that is, the whole burgh holds of the Sovereign: But then the Provost and Bailies are superior with respect to their particular burgeses, by the charter of erection of the burgh, so that they grant new charters and enter heirs by hasp and staple.

THE LORDS sustained the pursuer's title of infestment by hasp and staple, as sufficient to convey the right, and carry on this process, unless the defender quarrel the propinquity of blood.

*Fol. Dic. v. 2. p. 246. Forbes, MS. p. 73.*

1731. June 25.

Sir RODERICK M'KENZIE of Scatwell *against* CHRISTIAN MONRO.

No 403.

A HUSBAND having granted to his wife a liferent disposition of a tenement within burgh, upon which sasine was taken, bearing, that the husband had resigned *propriis manibus*, and the sasine was subscribed by the Bailie and Notary, but not by the husband; in a competition, it was *objected* against this infestment, That it was null, as proceeding without any warrant from the husband. *Answered*, The sasine bears that resignation was made, and being subscribed by the Bailie as well as the Notary, it is an instrument that in burgage-holding is probative of the resignation as well as of the infestment, supported as it is by the liferent-disposition produced. THE LORDS sustained the instrument of sasine, in regard the liferent-right was produced, and that in the instrument of sasine the husband resigned *propriis manibus*, in the hands of the Bailie, who signed the said instrument with the Notary, in terms of the act 27th, Parl. 1567. See APPENDIX.

*Fol. Dic. v. 2. p. 246.*