

her to take her sasine to serve for the said lands provided to her in liferent, but being another place designed by himself; and after the said Lady's infestment, the old Laird disposing the lands granted to her in warrandice to the Laird of Lawriston, for causes most onerous of debt, wherein he was bound, and had paid the same for him; which Laird of Lawriston craving by a pursuit of declarator, that it might be decerned, that her right might not be found to extend to these warrandice lands, disposed as said is to him, for this reason; viz. because she was not seised upon the ground of the said lands, they lying so far discontinuous from the other lands, whereat her sasine was taken, conform to the warrant of the said union made by her husband, which could not sustain, being done and made at another place than the place of the union appointed to himself by the King's charter granted to him as said is, and so could not strike against the said warrandice lands: The Lords found this reason relevant and proven, and in respect thereof, found the said sasine and right, so far as concerned the warrandice lands, to be null, and decerned against the same, conform to the desire of the summons.

Act. *Nicolson.*

Alt.

Clerk, *Gibson.**Durie, p. 806.*

1676. February 24.

HILTON against LADY CHEYNES.

THE Lady Cheynes being infest in an annual-rent upon a right granted by her husband, her sasine was questioned upon these grounds: 1st. That it was null, in so far as the bailie and attorney in the sasine were one person, who could not both give and take the sasine: And, 2d, The provision was during marriage, and after the creditor that did compete, his debt; and though it could be sustained, where there was no contract of marriage for a competent provision; yet it could not be sustained for the whole annual-rent, being exorbitant, her husband's estate and debt being considered.

The Lords, in respect it did not appear evidently, that it was a mistake of the notary, that the sasine did bear the same person to be both bailie and attorney, in the clause of tradition; and seeing by the first part of the sasine, it was clear, that there was a distinct attorney who did present the sasine to the bailie; did therefore incline to sustain the sasine: but, before answer to that point, they ordained the parties to be heard upon the said other allegiance, and the relief to condescend upon her tocher and the rent of the estate, and the creditor upon the burdens.

*Newbyth, Reporter.**Fol. Dia. v. 2. p. 363. Dirleton, p. 165.*

No. 24.

No. 25.

Where a sasine bore that the same person had been both bailie and attorney, it was sustained notwithstanding, as it appeared otherwise that this was a mistake.