

the lands, or any not having right, either for removing therefrom, or for the mails and duties thereof. No 389.

Clerk, *Scot.*

*Fol. Dic. v. 2. p. 246. Durie, p. 468.*

\* \* Auchinleck reports this case :

A SASINE given by hasp and staple will not give the receiver of the sasine action to pursue as heir active, except it be for mails and duties of the lands wherein he is seased, and against the disponer of the tenement to warrant the same free of annualrents.

*Auchinleck, MS. p. 210.*

1630. July 9.

HOUSTON against MAXWELL.

ONE Houston being seased in a tenement in the town of Dumfries, as heir to his mother's brother's oye, cognosced and tried by an inquest before the town, pursuing thereupon for reduction of a disposition of the said tenement, made by his said predecessors, to whom he was cognosced nearest heir, as said is, to the said defender; the pursuer's sasine being quarrelled as null, because it flowed not upon a retour past the Chancery, without which had preceded, to have been the warrant of the sasine, no process could be granted for reducing of the defender's rights, especially the pursuer not being in possession; for albeit the same might be sustained to produce action for recovery of mails and duties, against naked possessors *sine titulo*, or to continue and retain possession, or to seek removing; yet it could not be a title *in petitorio* to reduce another party's heritable right, and could not instruct this pursuit *active*;—the LORDS repelled this allegiance, and found the sasine sufficient to produce this action, seeing the same was not pursued to qualify the pursuer's heir, but upon his sasine, as infest in the lands controverted; which, albeit it was given to him as heir, yet the controversy was for that land, wherein he was infest thereby, and not if he was heir thereby; for a sasine upon a precept of *clare constat* would have produced the like action to dispute upon that subject contained in the sasine which gave right to the lands, except it had been elided by one having a better right.

Clerk, *Hay.*

*Fol. Dic. v. 2. p. 264. Durie, p. 527.*

1632. January 25. HAMILTON against DUNDONALD.

THE pursuer being seased upon a precept of *clare constat*, expressed in the bearing to be granted to the pursuer by the Master of Abercorn, as Commis-

No 390.

A sasine of burgage lands without a retour, found a sufficient title to pursue reduction.

No 391.