

No 8.

1626. March 24.

GRAY *against* TENANTS.

A PURCHASER, though his sasine was not registered, was found preferable to the seller's creditor arresting the rents in the tenant's hands; for the sasine was a real right with regard to the seller and his creditor, and consequently against the tenants, who did pretend no right to the property.

Fol. Dic. v. 2. p. 330. Durie.

* * * This case is No 108. p. 562, *voce* ANNUALRENT.

No 9.

As a formal discharge of a reversion must be registered, so must an obligation to grant a discharge.

1626. November 25.

TURNBULL *against* SCOT.

THE LORDS found, in an action betwixt Turnbull and Scot, a bond produced for verifying of a triply, admitted to Turnbull's probation, whereby the maker of the bond was obliged to discharge a reversion granted to him to be null, because it was not registered in the Clerk of Register's books, conform to the act of Parliament *anno* 1617, and therefore found the triply founded thereupon not to be proved; and this was found, notwithstanding that the pursuer *alleged*, That the act of Parliament foresaid extended not to bonds made for discharging of reversions, and there was not any mention made of such bonds in the said act, and the LORDS could not extend the act of Parliament further than the very words thereof bore; notwithstanding of the which allegiance, the LORDS found the same null, for not registration, as said is, because the act of liti-contestation found the allegiance founded upon a bond to discharge the reversion, to be as sufficient as a discharge thereof; and so as it was equivalent to a discharge, they found that it ought to be of the nature of a discharge in that point, which, without registration could not have been sustained; and this was found, being proponed not by him who made the bond, but by a third person, who had acquired the heritable right from the maker of the bond after the making thereof, and whom the LORDS found to be a competent party, and to have sufficient interest to propone that nullity; albeit the pursuer *alleged*, That the act of Parliament admitted that to be proponed only by one who had a better right, in which case the proponer was not, whose right was after the pursuer's right and inhibition executed thereon, which was repelled, and the bond found null.

Act. Stuart.

Act. Cunningham & Scot.

Clerk, Gibson.

Fol. Dic. v. 2. p. 330, 331. Durie, p. 236.

REGISTRATION.

1354I

* * Kerse reports this case :

FOUND, That a bond to discharge a reversion equivalent to the discharge of a reversion in prejudice *tertia personæ*.

No 9.

Kerse, MS. fol. 84.

1627. January 31. FINLAYSON against FINLAYSON.

No 10.

GRANTED by a bill to Robert Finlayson, that he should retire a bond of Walter Finlayson's of 8000 merks out of the register, to pursue him thereupon in Dantzick, because the extract thereof would not make faith there.

Spottiswood, (REGISTRATION.) p. 272.

1628. January 25. FINNIE against OLIPHANT.

No 11.

PATRICK OLIPHANT and his Spouse being charged by Janet Finnie, to exhibit a bond (wherein her name was) before the Commissaries of Edinburgh, did exhibit it, without prejudice of his lawful defences, wherefore it should not be delivered to her. In the mean time, she getting it up from the clerk to see, puts it in the register, and re-produces it registered. He having complained to the Commissaries, they ordained her, by their decret, to re-produce the principal bond; whereupon he raised letters, and charged her. She suspended, alleging it to be *factum impræstabile*. THE LORDS, seeing the bond could not be taken out of the register again, ordained it to have no more respect than if it had not been registered at all; and that she should have no advantage by the registering thereof.

Spottiswood, (REGISTRATION.) p. 272.

* * The next seems to be the same case with the above.

1628. January 29. GRAHAM against OLIPHANT.

No 12.

A BOND called for to be exhibited before the Commissaries of Edinburgh, at the instance of one pretending right thereto, who, after the exhibition, takes up the bond to see, and, in the mean time, gives in the same to the Register. The party producer summons the party uptaker to produce the bond unregistered. THE LORDS find the registration null.

Auchinleck, MS. p. 189.