

till February 1627, notwithstanding that the sasine proceeds upon a retour passed before the warning; for the LORDS found the sasine could not be drawn back to the retour after two terms passed.

No 42.

Auchinleck, MS. p. 191.

1627. July 26.

TOUCH *against* HIS TENANTS.

A COMPRISING being deduced before Whisunday, and the compriser having made warning of the comprised lands, was found to have action to pursue removing upon the said warning, although he was not seised till after Whitsunday.

No 43.

Auchinleck, MS. p. 193

* * Durie's report of this case is No 4. p. 10430. *voce* PERSONAL OBJECTION.

1628. Julg 10.

HERRIES and CUNNINGHAME *against* LINDSAY.

IN a removing, Herries and Cunninghame against Lindsay, the LORDS sustained the pursuit upon a sasine, albeit the same was after the warning, seeing the sasine proceeded upon a charge given by the pursuer to the superior, who was charged upon a decret recovered by the same pursuer, whereby the author of her right, viz. the heir of her husband, who, by her contract of marriage, was obliged to give her a liferent-infestment in the lands libelled, for not fulfilling thereof was put to the horn, and his superior upon that horn was decerned to give her a precept of sasine, and for obedience of the decret, the superior had given the said precept, and she was infest by this sasine produced; which was sustained, albeit done after the warning, seeing the same was before Whitsunday subsequent to the warning, and the said contract, horn, and decret, and charge given to the superior, all preceded the warning, and were reputed to be sufficient diligence to make the subsequent sasine to be drawn back to the time of the said diligence, which was done in due time before the warning, as said is. *See SASINE.*

No 44.
Found in conformity to Small against Tenants, No 31. p. 13266.

Act. *Ulphant.*

Alt. ———.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 306. Durie, p. 306.

* * Spottiswood reports this case :

IN a removing pursued by Walter Herries, and Cunningham his spouse, against John Stuart, *alleged* by the Tenants, That the pursuer's sasine produced gave him no interest, because it was posterior to the warning, and so

No 44. the Tenants were *in bona fide* not to remove, knowing that the pursuer, at the time of the warning, had no real right. *Replied*, That ought to be repelled, in respect of her diligence she had used to get herself infeft before the warning, viz. she had charged the heir of her first husband, who should have infeft her, and for his disobedience had got him decerned to lose the superiority of his lands during his lifetime; likeas, she had done the same diligence against the next immediate superior, viz. the Bishop of Galloway, and had obtained decret against him; likeas further, she was infeft not long after the warning in May before the term. In respect of which concurrences, the LORDS found the reply relevant.

Spottiswood, (REMOVING.) p. 284.

* * * Auchinleck also reports this case :

A WOMAN obtains a charter from her husband conform to her contract of marriage. Her husband deceases before she got sasine. She obtains decret against the heir to give her sasine. Upon his refusal, she charges the superior and she gets sasine before the term of Whitsunday; but after the warning made to her Tenants, she pursued removing. The Tenants *excepted*, That she could have no process upon that sasine, because she was not seised the time of the warning. THE LORDS sustained action upon the sasine, in respect of her other diligence, but reserved the modification of the violent profits to themselves.

Auchinleck, MS. p. 193.

No 45. 1628. July 17. Laird of DRUMQUHASHILL *against* CLELAND.

A SASINE given 40 days before Whitsunday, although given after the warning, was sufficient to pursue removing by reason the pursuer was retoured.

Fol. Dic. v. 2. p. 310. Auchinleck, MS. p. 210.

* * * Durie reports this case :

1628. July 17.—IN a removing, the L. Drumquhashill against Sir James Cleland, the LORDS sustained the warning and summons and process of removing, albeit that at the time of the warning the pursuer was not infeft nor seised, seeing he was seised 40 days before the term, to the which the warning was made, which sasine proceeded not upon a retour, but upon a precept of *clare constat* given by the Duke of Lenox superior, and which, albeit it was not of a date anterior to the warning, yet being being 40 days before the term, as said is, was sustained.

Act. *Cunninghame.*

Alt. ———.

Clerk, *Gibson*