

No. 13.

1628. March 25.

ANDERSON *against* LAW.

ANDERSON being cautioner for Law, in a sum to be paid to N. the bond being registered at N's instance, Anderson pursued Law to relieve him thereof. Law *alleged*, He was not distressed, he neither having paid the sum, nor yet having been charged with letters of horning. Yet the LORDS sustained the pursuit, in respect that the bond was registered against him.

Spottiswood, (REGISTRATION.) p. 272.

No. 14.

1628. December 4.

LOGAN *against* HUNTER.

A dispoer, whose sasine was registered, was preferred to an appriser first infeft, whose sasine was not registered within 60 days.

IN a removing, a creditor having a disposition by contract, containing procuratory of resignation of some land made by his debtor, and the same land being comprised by another creditor to the said debtor, before any resignation was made, according to the said disposition, and before any sasine was taken thereon, and the compriser having also obtained a charter from the superior of the lands containing precept of sasine, and accordingly he being seised before the said resignation was made by the said other creditor now pursuer; and the said sasine of the compriser not being registered conform to the act of Parliament in the Clerk of Register's books *debito tempore*, whereby he was forced to take another new sasine; before the taking whereof, the creditor who had the first disposition, caused make resignation conform thereto, and thereupon was infeft before the compriser was of new valuably seised, albeit after the charter, and precept of sasine, given in favour of the compriser, and after the first sasine was taken thereupon, unregistered, as said is. This first disposition before the comprising and sasine, conform to the disposition taken after the comprising, and charter, and sasine, unregistered, but before the other valid sasine, was preferred, and the said posterior sasine given to the compriser was found, could not be drawn back to the comprising, seeing the sasine given conform to the procuratory was a mid impediment thereto, albeit that the superior was charged by the compriser to receive him before the using of the procuratory; which charge he alleged ought to be sustained, as if he had been then seised; which was repelled, seeing, conform to the charge, he obtained a precept in due time, and it was his own fault who expeded not his sasine thereon lawfully in due time.

Act. *Stuart & Primrose.*Alt. *Nicolson & M^cGill.*Clerk, *Scot.*

Fol. Dic. v. 2. p. 331. Durie, p. 404.

* * * Spottiswood reports this case :

No 14.

In a removing pursued by Andrew Logan of Cotfield against certain Tenants of a tenement in Leith, compeared Gilbert Hunter, and *alleged*, The tenants ought not to be decerned, because they were his tenants, and he was infeft in the tenement by charter and sasine, granted by the superior, viz. the town of Edinburgh. The case stood thus, Cotfield having paid sundry sums for his goodson, John Greenlaw, the said John, in satisfaction thereof, disposed his tenement to him, who apprehended possession thereof, and was in peaceable uptaking of the mails, but no further ; neither resigned in the superior's hands, conform to the procuratory contained in the disposition. *Interea* Gilbert Hunter being a lawful creditor of John Greenlaw's, compriseth the same tenement, and obtaineth himself infeft therein by the said superior, but, through negligence forgets to register his sasine in due time, so that he was forced to take new sasine. *Medio tempore*, before the taking of the last sasine, Cotfield perceiving what was a-doing, makes resignation, and is seased. So the dispute ran upon this, That Gilbert *alleged*, he having lawfully comprised the tenement from John Greenlaw, who was not then denuded thereof ; and being infeft therein, and having obtained a decret of removing against the tenants, he might defend the tenants *in hoc judicio*, and albeit his first sasine was null, yet in respect of his diligence, his last sasine should be drawn back to the time of the comprising. *Answered*, A comprising was no real right, and did not denude the debtor so, but that the pursuer might afterwards resign upon his prior disposition, before sasine taken by the compriser, which only gave the defender real right. THE LORDS repelled Gilbert's allegiance, because they thought that Cotfield having a lawful disposition for an onerous cause, with a procuratory of resignation, might resign at any time, before another was lawfully infeft, the debtor being altogether denuded by virtue of the disposition and procuratory foresaid in his favour.

Spottiswood, (REMOVING.) p. 286.

1629. February 5.

CHRISTIE against RAMSAY.

No 15.

MR THOMAS CHRISTIE, assignee constituted by David Ramsay to a bond of L. 500 Sterling, made to David by his brother George of Langraw, sought registration of the same against William Ramsay, son and heir to George, at least lawfully charged to enter heir. Compeared John Yair, a creditor of George's, and *alleged*, The bond could not be registered, in respect it was satisfied, which he referred to the cedent and assignee's oaths *conjunctim*. *Replied*, Neither relevant nor competent to the creditor, *ad hunc effectum* to im-