

\* \* \* 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-

No 15.

pede the registration, *hoc attento*, That the cedent was out of the country, whose oath they sought only for delay, but was content it should be reserved against the execution. THE LORDS found the exception relevant.

*Spottiswood, (REGISTRATION.) p. 272.*

No 16.

1629. December 2. MACKMICHAEL against Her SON.

May an interest in a deed still remain so as to insist that it be registered, although it has been delivered up?

KATHARINE MACKMICHAEL, relict of Robert Douglas, sought registration of a bond of 500 merks, granted by N. to her umquhile husband, and her, in liferent, and to James Douglas their son, after them. *Alleged* by her son and his tutor, That she could never seek to have the foresaid bond registered, *ad hunc effectum*, that she should have the annualrent thereof during her life; because the defender and his tutor having called her for to exhibit and deliver to them the whole bonds pertaining to her husband and him after his decease, she produced a number of bonds, and, among the rest, this of 500 merks, which was delivered to the defender with sundry others, she making no opposition against it at that time; by reason whereof, she could never be heard now to come back again, and seek the liferent of that bond, having prejudged herself by her omission at the first time. THE LORDS, nevertheless, thought it hard to seclude her from the benefit of liferent provided to her in the bond, because of the omission of her procurator or herself, being a woman; and therefore sustained the action.

*Spottiswood, (REGISTRATION.) p. 273.*

1630. December 30.

RAMSAY against DURHAM.

No 17.

RAMSAY, daughter-in-law to James Durham of Pittarro, craves their contract of marriage to be registered; in which contract, the said James was obliged to provide the said pursuer to 600 merks during her lifetime, and 4000 merks to the heir of the marriage. It was *excepted*, That no registration could be granted at her instance, because he had fulfilled all the contract, so far as concerned her part thereof, and had obtained her discharge thereof; and as for her son's part thereof, it could not be registered at her instance, which the LORDS found relevant.

*Auchinleck, MS. p. 190.*