

1594. June 18. REDPATH *against* L. of GREENLAW.

IN ane removing persewit be ane Reidpeth *contra* The L. of Greenlaw, it was *allegit*, That the lands libellit being comprysit be umquhile John Archbishop of St Androis, fra this defendar, gif ony infestment was obteanit be this persewar's father or gudscheir, as donatars to the said Bishop's bastardie, the same was renunciit in favours of this defendar, and swa this persewar beand aire to them wha renunciit, had na place to persew. It was *answerit*, That *renunciatio non est modus habilis transferendi domini*, and sua, unless the defendar wald say, that aither the said partie had renunciit within the sevin yeir efter the comprysing, *quo casu*, the defendar having ane reversion legall, the said renunciatioun in his favour wald have extinguishit the said comprysing, and wald have made the said defendar's infestment to convalesce, else the said renunciation could be na title to mentene the defendar and denude the persewar. In respect of the whilk reply, the exception was repellit.

*Fol. Dic. v. 1. p. 469. Haddington, MS. No 414.*

1626. July 22.

A. *against* B.

ONE having, by contract, heritably dispooned his lands to ———, and resigned the same in his favours, thereafter he dispoones the same to another, who, after the procuratory of resignation, and before the sasine taken by the first buyer, takes sasine, before the taking of sasine by him who acquired the first alienation; and by virtue of his first sasine, he who acquired the second right becomes in possession of the lands; this right being granted to be holden of the annailzier, and the other right being public upon resignation, as said is, to be holden of the superior. This first acquirer being last seased, albeit by a public infestment, as said is, pursues the other who was first seased and in possession, by virtue of his right to be holden of the annailzier, for removing, wherein the LORDS admitted the exception, founded upon the defender's first sasine, cled with possession; albeit the pursuer *replied*, That his contract and procuratory of resignation was before the defender's right, and that his sasine, albeit a short space after the excipient's sasine, (for they were both in one year,) ought to be drawn back to his preceding procuratory of resignation, and the possession ought not to be respected, seeing it was but a year past since the first of their rights was made, and there were few weeks betwixt the dates of their sasines; notwithstanding of the which reply, the exception was sustained, founded upon the said prior sasine and possession, albeit the other was public, and so little distance of time betwixt them, and so short possession.

Act. ———.

•Alt. *Lawtie*.

Clerk, *Gibron*.

*Fol. Dic. v. 1. p. 469. Duric, p. 223.*

No 9.

A renunciation of an infestment is not *habilis transferendi domini*, unless it be in favour of one who has a reversion.

No 10.

A second disposition first completed by base infestment and possession, preferred to a prior disposition, containing procuratory of resignation, on which sasine was taken soon after the base infestment.