DIVISION V.

Deciſions upon the clauſe of the Act of 1696, declaring Heritable Bonds, &c. to be held as granted of the dates of the Saſines taken upon them.

No 258.
It was diſputed whether the date of the ſaſine itſelf, or of the regiſtration of it, ought to be the rule for computing the 60 days. Found to be the date of the ſaſine.

1715. *February* 17. MENZIES *againſt* MENZIES.

IN the cauſe, No 96. p. 981. the creditors having further inſiſted to reduce certain ſecurities granted by Mr John Menzies for his good-daughter's proviſion, upon the act 1696, which declares all real rights to be reckoned as granted from the date of the infeftments, and not from the date of the deed, whereupon the infeftments is to follow, when the granter is under the qualifications mentioned in that act: They *alleged*, That though the date of the ſaſine be not within the 60 days of the diſponer's being bankrupt, in the terms of that ſtatute, yet the regiſtration of the infeftment is within the 60 days, and this being the deed that makes the ſame public, and renders it effectual, muſt be the meaning of the act, when it ſpeaks of the date of the ſaſine; for thus a poſterior infeftment firſt regiſtrate, will be preferable to a prior infeftment thereafter regiſtrate.

Answered for the defenders, That the act 1696, being introduced *præter juris communis regulas*, and having a retroſpect to all deeds done within 60 days before the breaking; and a further preſumption that deeds, whereupon infeftment may follow, are of the date of the infeftments to be taken thereupon, therefore the words of the law are moſt ſtrictly to be followed. Now the ſtatute ſpeaks nothing of the date of the regiſtration, but of the ſaſine only; and the regiſtration is a diſtinct act from the taking of the ſaſine, and therefore would have been noticed by the act, had the legiſlature intended to have made the preſumption draw down ſo far: And then parties would have been put upon their guard to regiſtrate their ſaſines, ſo ſoon as they were taken: But the law, that allows 60 days, ſtanding in force, it was optional to the lady to regiſtrate any time within that ſpace.

Replied for the purſuers, That whatever be the words of the law, yet judges muſt ſo interpret them, as that they be not rendered eluſory and ineffectual, for the ends propoſed: And the fraud here being ſo palpable, and the regiſtration delayed to the very laſt of the 60 days, *res ipſa loquitur*, that this *turpe lucrum est extorquendum*.

THE LORDS found, That, in the caſe of the wife, the 60 days relating to deeds made by a bankrupt, commence from the date of the ſaſine, and not from the date of regiſtration: And therefore repelled the reaſons of reduction. No 258.

Act. Gray & Robert Dundas. *Alt. Graham & M'Leod.* *Clerk, Sir James Justice.*

Bruce, No 73. p. 88.

*** Dalrymple obſerves the ſame caſe:

THE purſuer further inſiſted (*See* No 96. p. 981.) for reducing the infeftments granted by Mr John Menzies, the bankrupt, for ſecuring the ſaid liferent-proviſion, in reſpect that he fled, and was under the other qualifications mentioned in the act of Parliament 1696, within 60 days of the regiſtration of the ſaſine.

It was *anſwered:* The 5th act of Parliament 1696, reckons the 60 days not from the date of regiſtration of ſaſines granted by bankrupts, but from the date of the ſaſines, and there intervened much more than 60 days betwixt the taking of the ſaſines and the granter's withdrawing.

It was *replied:* The 5th act 1696, does indeed reckon the 60 days only from the date of the ſaſine; but the 18th act of the ſame Parliament founds the purſuer's reaſon of reduction, in as far as it is thereby ſtatute and declared, that no ſaſine, or other writ or diligence appointed to be regiſtrate, ſhall be of any force or effect againſt any but the granters, and their heirs, until it be duly booked and inſert in the regiſter; ſo that, as by the former act the date was made the *terminus a quo*, by the laſt act the 60 days run from the regiſtration, for a very good reaſon expreſſed in the narrative, viz. That unleſs ſaſines and other writs be booked and inſert in the regiſters, the lieges cannot be certiorate thereof; which is the great uſe and deſign of regiſtration. The taking of ſaſine is as latent as the ſubſcribing of bonds or diſpoſitions; and therefore it was very well provided, that the publication of them, by inſerting them in the regiſter, ſhould only be reſpected.

It was *duplied:* That the act 18. was not deſigned for any extenſion of the act 5. concerning notour bankrupts, but only for ranking of infeftments and other diligences requiring regiſtration; for the act of bankrupt having extended the effect of inſolvency to 60 days preceding the date of the ſaſine in favour of creditors, which is a period beyond what was ever known in our law, or any other nation, might prove a ſnare to creditors or others not knowing, or in a condition to know, the ſtate of an inſolvent perſon's affairs; and it is ſpecially to be obſerved in this caſe, that the defender was *in optima fide* to accept a right for ſecuring of her onerous liferent, and was no manner of way participant of the fraud alleged upon, by keeping the infeftments latent for 58 days betwixt the date and regiſtration.

THE LORDS found, 'That the 60 days were only to be computed from the date 'of the ſaſine, in ſo far as concerns the lady's liferent-proviſion, who was noways 'partaker of the alleged fraud.'

Fol. Dic. v. 1. p. 86. Dalrymple, No 137. p. 190.