

1626. *March 22.* THOMAS DAVIDSON *against* GORDON.

IN a removing of Mr Thomas Davidson, *against* Gordon, the Lords sustained a sasine, albeit given after the warning and also after the term, as a sufficient title to sustain that action, and to produce removing thereupon, notwithstanding that the same was after that term to the which the warning was made, because it proceeded upon a retour done before both the term and also before the warning. And which the Lords found ought to be drawn back to the date of the retour, which was before the warning, and so was found sufficient.

*Act.* Lawtie. *Alt.* ———. Gibson, *Clerk.* *Vid.* 20th January 1625, L. Selmes, and the cases there cited.

*Page* 194.

1626. *March 22.* PATRICK COLLACE *against* The LAIRD OF ELPHINSTON.

MR Patrick Collace, servitor to Mr Robert Nairn, advocate, being made assignee to a comprising, by one William Henderson, who was son and served general heir to John Henderson, and which John Henderson had deduced that comprising against umquhile Mr Robert Johnston of Leuchie, for a debt owing by the said umquhile Mr Robert to the said umquhile John;—the said Mr Patrick, as assignee constitute to that comprising, by the heir generally served to him, who deduced the same, pursues the L. of Elphinston, superior of the lands comprised, to hear him be decerned, to give him precepts for obtaining of infeftment, according to the comprising. Which action was sustained by the Lords, albeit it was alleged for the defender, *viz.* the L. of Elphinston, that the pursuer was an advocate's servant, and so not capable of an assignation to a comprising, in respect of the Act of Parliament prohibiting members of Session to take assignations to pleas; which was repelled, because comprising come not under that Act; and also it was alleged that the pursuer could not seek infeftment, by virtue of his assignation to that comprising, while the said sentence of comprising were first transferred, both in the heir of the obtainer and deducer thereof, and also in some person to represent him against whom the comprising was deduced; seeing this comprising was a sentence, and behoved to be ruled, as all other sentences, which ever require transferring, before any execution follow thereupon, when the party obtainer of the sentence dies. Which was repelled; and the Lords found no necessity of transferring, in regard thir precepts for obtaining of infeftment were desired to be granted, by pursuit and way of action, and not by a summary charge of letters of horning, to command the superior to infeft; which summary execution, if it had been either sought, or used without pursuit, the Lords found that they would not sustain the same; but sustained the pursuit and execution, without transferring, *ut supra.*

*Act.* Nairn. *Alt.* ———. Gibson, *Clerk.* *Vid.* for this first part, 6th July 1625, Mowat; for the last part, 20th November 1624, L. Lagg; 23d and 27th January, and 3d February 1624, Stevinson; *penult* July 1625, Guthrie; 11th February 1629, Frazer; 5th December 1628, L. Corsbie; 22d December 1626, Gordon.

*Page* 194.