

till February 1627, notwithstanding that the sasine proceeds upon a retour passed before the warning; for the Lords found the sasine could not be drawn back to the retour after two terms passed.

No 42.

Auchinleck, MS. p. 191.

1627. July 26.

TOUCH against His TENANTS.

A COMPRISING being deduced before Whisunday, and the compriser having made warning of the comprised lands, was found to have action to pursue removing upon the said warning, although he was not seised till after Whitsunday.

No 43.

Auchinleck, MS. p. 193

* * Durie's report of this case is No 4. p. 10430. voce PERSONAL OBJECTION.

1628. Julq 10.

HERRIES and CUNNINGHAME against LINDSAY.

IN a removing, Herries and Cunninghame against Lindsay, the Lords sustained the pursuit upon a sasine, albeit the same was after the warning, seeing the sasine proceeded upon a charge given by the pursuer to the superior, who was charged upon a decret recovered by the same pursuer, whereby the author of her right, viz. the heir of her husband, who, by her contract of marriage, was obliged to give her a liferent-infestment in the lands libelled, for not fulfilling thereof was put to the horn, and his superior upon that horning was decerned to give her a precept of sasine, and for obedience of the decret, the superior had given the said precept, and she was infest by this sasine produced; which was sustained, albeit done after the warning, seeing the same was before Whitsunday subsequent to the warning, and the said contract, horning, and decret, and charge given to the superior, all preceded the warning, and were reputed to be sufficient diligence to make the subsequent sasine to be drawn back to the time of the said diligence, which was done in due time before the warning, as said is. See SASINE.

No 44.
Found in conformity to Small against Tenants, No 31. p. 13266.

Act. *Ulphant.*

Alt. ———.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 306. Durie, p. 306.

* * Spottiswood reports this case :

IN a removing pursued by Walter Herries, and Cunningham his spouse, against John Stuart, alleged by the Tenants, That the pursuer's sasine produced gave him no interest, because it was posterior to the warning, and so