1629. *March* 13. MERSHALL *against* The LAIRD of DRUMKILBO.

ONE being presented to the chaplainry of Dunkeld, pursues the Laird of Drumkilbo for £100, addebted to the said chaplainry, furth of his lands of Lethindie, before the commissary of Dunkeld, and obtains decreet for null defence, for three years' duty; and having charged for other years after the decreet, Drumkilbo suspends, and alleges, That the said pursuer could not claim the said yearly annual furth of his lands, except he either produced a mortification thereof, or at least alleged, that he, or his predecessors, chaplains of the said chaplainry, had been thirty years in possession of the same since the Reformation, or ten years before the Reformation. To the which the chaplain opponed his decreet. The Lords would not respect the decreet; but ordained the parties to dispute their right, as if that decreet had not been obtained.

2d MS. Page 190.

1629. *March* 18. CANT *against* EDGAR;
OR,
1627. *December* 12. FALCONER *against* BEATTIE.

IN an action pursued by Cant against Edgar, it was alleged by the defender, That the debt contained in his father's bond, which was heritable, and for the which he was pursued as heir to his father, by this pursuer, heir to the assignee, could not appertain to the assignee's heir, but to his executors; because, although the bond be heritable, yet the assignation made it moveable, and, consequently, to appertain to the executors. The Lords repelled the allegeance, and found that the assignation did not alter the nature of the bond.

2d MS. Page 10.

1629. *June* 17. A. B. *against* TURNER.

ONE Turner is pursued to remove from a roum, whereof he had tack set to him by one called Dumbar, at the instance of A. B., who had obtained another tack from the said Dumbar, the entry whereof was at the issue of the said Turner's tack. It was alleged by Turner, That he bruiked as having right from a liferenter, who was not called. It was replied, That he could not clothe himself with another right, to introvert the possession of him that set a tack to him, by virtue whereof he had bruiked the lands till his tack was expired; but must now give over the possession which he had received from the setter to the pursuer, who now was become in place of the setter, by virtue of a new tack set to him. The Lords repelled the exception in respect of the reply.

2d MS. Page 190.

1629. *July* 23. MR ARCHIBALD MONCREIFF *against* The LAIRD of BALNAGOWN and His VASSALS.

IN the same action, [*See Moncreiff* against *Balnagown, &c.* 11*th July*

1629; *supra p.* 292.] it was alleged, That the said Mr Archibald Moncreiff, compriser, could have no action for the maills and duties of the lands comprised; because he was not infeft upon his comprising. To the which it was answered, That the defenders had no place to allege this exception; because the comprising was deduced, against themselves and their lands, for their own proper debt, and there was no other party contending with the pursuer, who could allege a real right to the land, but only the defender. The Lords repelled the exception in respect of the reply.

2d MS. Page 32.

1629. *November* 13. WALLACE *against* MURE.

IN the same action, [*Wallace* against *Mure, 7th and 9th July* 1629;—Dictionary, *p.* 1347, *&c.*] it was alleged by the bastard's relict, who was specially called in the particular declarator of the sum of 1000 merks, contained in an heritable bond, whereupon the former interlocutor was given, that the donatar to the simple gift of bastardy could have no declarator upon the right of the said sum; because the defunct, being bastard, had not only an heritable bond, but seasine followed thereupon, and so fell not under the simple gift. To the which it was answered by the donatar, That the relict had no interest to propone this allegeance, but allenarly the debtor of the sum. Whereunto it was replied, That she being a party called in this declarator, she might very well allege any thing whereby she might exclude the pursuer's right. Which the Lords found relevant.

2d MS. Page 24.

1630. *January* 15. LAWRIE *against* MILLER.

THE order of redemption being used by the father, and an instrument being taken by him of the consignation of the sum of 100 merks, for the which the lands were wadset; but no declarator following of the redemption: the son of the redeemer,—having, by decreet-arbitral, renounced all right that he could pretend to the said lands,—pursues the heir of the bailie, in whose hands the money was consigned, to make payment to him of the same. It was answered and excepted by the defender, That this instrument, being but the assertion of one notary, could not oblige the party and his heirs to pay the sum, except he had subscribed the instrument, or given some other bond for making the same forthcoming, and especially in respect there had no declarator followed on the redemption. And the parties are all dead; and, if an instrument of consignation shall oblige the parties alleged to have received the consigned monies, but any other adminicle, it may work in matters of great consequence, as well as in this, for no more notaries are required but one in such a redemption and instruments taken thereupon. The Lords required some farther adminicle to prove that the sum was only consigned in the bailie's hands, and not uplifted again by the consigner, as is usually done where declarators are not sought.

2d MS. Page 197.