

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 infest 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.*

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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 seaisne 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 allegiance, 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.*

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

THE order of redemption being used by the father, and an instrument being taken by him of the consignment 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 decret-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 consignment 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.*