RECOGNITION.

No. 2. 1743, Jan. 11. Maxwell *against* Maxwell and Riddell.

The lands of Friar's-carse being kirk-lands erected, there was in 1632 a gift of recognition by the Crown *ob non solutum canonem* to the Lord of erection, but which was to one Guthrie in trust for the family, and intended for transacting and paying debts. The trustee, for payment of the two greatest and principal creditors, granted two wadset rights holden of himself, and in 1643, for 13,000 merks, he made over the superiority and reversion to Hay of Aberlady, who would seem also to have been a trustee originally, and in the same year acquired one of these wadsets, amounting to 6500 merks, but whether all with his own money, or partly with the family's, did not appear; but it appeared that in 1644 there was a contract betwixt them and the widow of the family, containing an obligement of reversion for L.2600. The heir of the family continued to possess, and for many years paid Aberlady, by way of back-tack duty, the interest of the said sum of 2600 merks; and at last L.1000 of the principal was paid, and after that a great number of years run on, and security given for the whole. In 1708 Barncleugh made a sort of purchase of Aberlady's interest, and claimed not only the whole property and reversion that was in Hay, but the whole wadset of 6500 merks, because the contract 1644 was not extant,—but collateral writings, that quite satisfied, I believe, all of us, that there had been such a contract. Wherefore the question was, Whether without proving the tenor of this contract, we could sustain these against Barncleugh. I thought that where nothing was to follow but the extinction of a right or debt, proving the tenor is not necessary,—but where the right is not to be extinguished, but to subsist and be transmitted, then a proving the tenor seemed to be necessary. We found formerly Barncleugh's right extinguished without proving the tenor. Barncleugh reclaimed. And upon the face of the writings, considering the recognition as a valid right of property, I had great difficulty, (though I voted for the former interlocutor) because thereby the property stood in Aberlady, and could not be extinguished, but behoved to be conveyed. And though I was satisfied that Aberlady's right from Guthrie, the original trustee in the gift, as well as from the wadsetter, was originally also a trust for the family, except 2600 merks advanced by himself, yet as all the documents referred to that contract 1644 as an obligement to grant a reversion, I had also difficulty to find it a trust. But then I doubted whether there could be a recognition to the Crown *ob non solutum canonem* where the feu-duties belonged to a Lord of erection, for the reasons mentioned on the former papers, (see Note of No. 4, *voce* Tenor;)—and had the Court been of that opinion, there would have been no difficulty in sustaining the evidence we had, to extinguish or restrict Barncleugh's debt, without proving the tenor, because the gift of recognition would have been void *ab initio*, and could not have become better by the lapse of time, since the pos-

session was in the heirs of the family. But the Court thought the gift of recognition and declarator thereon good, (though it was not voted,) particularly the President and Arniston; and therefore my difficulty as to sustaining these documents to restrict Barncleugh's right without proving the tenor of the contract remained. But upon the question, in which I did not vote, it carried to adhere.

REDEMPTION.

No. 1. 1735, Feb. 20. M'LEOD *against* SIR ALEXANDER M'DONALD.

THE Lords sustained the defences. They thought the sum not arrestable, notwithstanding the order and consignation before declarator; and they also thought, though it had been arrestable, it could not be arrested by a creditor of the apparent-heir.

No. 2. 1736, Dec. 8. CROCK *against* GIBSON.

THE Lords adhered unanimously, whereby a premonition by an apparent-heir, who was served before consignation, was sustained. 2dly, Though the premonition do not bear production of a procuratory. 3dly, The consignation sustained, though the money was again taken up;—but then if the order had not been sustained, the irritancy in the reversion had been incurred.

No. 3. 1741, June 12. RAMSAY *against* CREDITORS OF WILLIECLEUGH.

THE Lords found, just according to my opinion, written on the information. (See under the Note of No. 7, *voce* WADSET.) We found the wadset land redeemable, and that upon payment of the wadset sums the defenders must renounce and cede the possession, reserving to the defenders the benefit of Kinnear's apprising in any proper process, as accords; but found that the pursuer had no sufficient title to quarrel the defenders' right to the warrandice lands, without producing a right preferable to Kinnear's apprising; and 24th June adhered.

No. 4. 1741, Dec. 4. SINCLAIR *against* MURRAY.

THE first question was, When a wadset is split by the wadsetter, whether the reverser can redeem from one, and not from the whole? The Lords found he could not, and therefore assoilzied, and did not determine the other objections.