lum invalidum vel vitiosum non juvatur; Regula cancellariæ de triennali, ex Gomesio.

Yet on the 21st February 1677, the Bishop of Dumblaine having produced a clear and undoubted right and progress to that reversion, he gained the cause against Francis, and the letters were found orderly proceeded.

Advocates' MS. No. 487, *folio* 251.

1677, *June* 5.—THOUGH in February last, the letters were found orderly proceeded, at Mr James Ramsay, Bishop of Dumblaine, his instance, *contra* Francis Kinloch; yet he had got it stopt to the 1st of June; and now again, upon a bill pretending he would take off their forty or rather eighty years peaceable possession by interruptions, (without condescending on any in particular,) Francis prevailed so far as to get a new stop, for producing his interruptions, till the 16th of July.

Advocates' MS. No. 566, *folio* 284.

1676, and 1677. MATTHEW LAURY *against* JAMES BROWN.

1676, *February.*—MATTHEW LAURY, Fletcher in Dalkieth, having charged James Brown, Cordiner there, upon a bond of 300 merks, Brown suspends, and raises reduction upon this ground, that he offered to prove by the charger's oath, that the true cause of the granting of the bond was not borrowed money as it bore; which being once confessed and acknowledged by him, then offered to prove *per testes instrumentarios* inserted, that the true cause of the granting the said bond was, that the charger having married the suspender's sister, by contract of marriage, the suspender and his mother became obliged, *nomine dotis,* to pay to the charger 500 merks in two moieties, 200 merks at one term, and the remanent 300 at another. And though the charger's mother having given bond for the last 300 merks, did pay it, but contented herself with a discharge of it, (as she had also taken of the 200 merks preceding,) without getting up her bond; when she is dead, Laury, the charger, most fraudulently affirms to this suspender, who knew no better, that the 300 merks in the bond (which he shewed him) were still owing to him; whereon Brown the suspender, being a simple and ignorant man, retires his mother's bond, and grants this new one charged on, and afterwards finds the discharges of the tocher. And so it being proven by the writer and witnesses inserted, that the cause of the granting this bond, was for a remain of that tocher; then offers to prove, *scripto vel juramento,* that the whole 500 merks of tocher was paid. And so the bond being granted by error and simplicity on the one hand, and evident circumvention and dole upon the other; and being granted for the same cause for which the mother's bond was given, and that being extinguished by payment and satisfaction, and reduced *ad non causam;* this bond must fall *in consequentiam,* as being in the charger's hands and custody *indebite et sine omni causa,* and therefore ought to be delivered up to the suspender, to be cancelled by him.

To this it was ANSWERED, that the reason was very relevant if true, but the *modus probandi* was nowise allowable, since his bond could be nowise taken away but by his own oath, or a contrary writ.

This being taken to interlocutor, the Lords allowed the reason to be proven in the foresaid manner condescended upon, and found it was his own oath took away the bond, (and not witnesses,) if he once acknowledged the cause of the granting thereof not to have been for borrowed money as it purported; for then *ex officio*, they ordained the writer and witnesses mentioned in the bond, to be examined before answer, anent what they heard or knew, the time of the subscribing, to have been the cause why Brown the suspender gave this 300 merks bond to Laurie the charger, and if it was for a remain of tocher. See for this case, *supra*, November, 1673, [Syme *against* Inglis,] No. 429, and the two citations from Dury there.

On the 6th of June, 1677, the Lords having advised Laurie's oath with the testimonies of the witnesses in the bond, they found Brown's reason of reduction not proven thereby, and therefore assoilyied, and found the letters on the bond orderly proceeded at Laurie's instance. *Advocates' MS. No.* 470, *folio* 243.

1677. *June* 9. ANENT PROOF OF BASTARDY.

JAMES BROWN, Advocate, had this case debated. One is ALLEGED to be a bastard; and for proving of it, a seasine of his is produced, wherein the notary designs him *filius naturalis* of such a man. They were to have the Lords' answer, if this was sufficient to prove bastardy *in re antiqua*. It may be, the notary thought the word *naturalis* good enough Latin to signify and design a lawful son, and opposed it only *filio adoptivo*, as sometimes it is done in law. I scarce think it a sufficient probation alone, though it may pass for an adminicle.

Advocates' MS. No. 567, *folio* 284.

1677. *June* 9. GUTHRIES *against* the LAIRD of GUTHRY.

IN the action, Guthries in Arbroath *contra* the Laird of Guthry, it was FOUND,

1*mo*, One that stands infeft only in an annualrent furth of lands, cannot pursue a reduction of rights of the property, as of a comprising, or wadset, or irredeemable disposition of that land.

2*do*, That an annualrenter cannot properly pursue an action for maills and duties, but only its natural action of poinding the ground, unless the annualrenter has used arrestment in the tenants' hand, and then he may pursue maills and duties, or rather to make them forthcoming. See this remarked *alibi*, in the fifth leaf of my manuscript of Miscellaneous Law Observations.

3*tio*, Though in the dispositive part there be three sundry annualrents mentioned and disponed; yet if the seasine at the clause about the act of tradition of earth and stone and a penny, bear only infeftment to have been given of one of the annualrents, through the omission and informality of the notary, they will get poinding of the ground for no more but that one annualrent expressed, till they take a new seasine for the rest.