would fall; and that Stair, M'Kenzie, and others, were all of this opinion; and the act of Parliament 1584, speaks only of a reasonable number of witnesses to seasines,—which may be verified in two. *Vol. I. page 552.*

1692. *December* 6, and *February* 2, 1693. IRVINE of Artamford *against* ROBERT KEITH of Lentush.

1692. *December* 6.—IN the petition given in by Irvine of Artamford against Mr. Robert Keith of Lentush, craving a sequestration of the rents of the lands of Fedderet; and Artamford's probation on a commission that Lentush's possession was *vi clam vel precario*, when he was executing a caption against Fedderet, and seeking him in his own house, that he kept possession of the house; the Lords now granted a conjunct probation to Lentush to instruct the manner of his entry to the possession, whether it was *via juris aut facti*,—to be reported the 8th January; and, in the mean time, ordained them to discuss the point of right and preference; with certification, that whoever tergiversed or failed, the possession should be given to the other party. *Vol. I. page 527.*

1693. *February* 2.—Irving of Artamford against Mr. Robert Keith of Lentush, mentioned 26th December, 1692. The Lords would not admit of this exception to stop a certification in an improbation, that you cannot quarrel my right, because you gave warrant to Irving of Cults to subscribe that contract for you, wherein you restricted your sum, and passed from your legal; and I am content to pay you, and offer to prove the giving the warrant by your oath: for the Lords considered Artamford was not in town, and to grant a commission, was to stop the process till June; and, therefore, repelled it *hoc loco*, but reserved it when they should come to debate the reasons of reduction. *Vol. I. page 553.*

1693. *February* 3. The ADMINISTRATORS of HERIOT'S HOSPITAL *against* SIR WILLIAM NICOLSON'S Creditors.

THOMAS FISHER, treasurer, and the other administrators of Heriot's Hospital, against the creditors of Sir William Nicolson. The Lords found the old feu-duty of Freerton to the abbot and monks of Hollyrood-house was 12 merks yearly; and that Forrester of Corstorphen, their vassal, having acquired in the superiority of it from the Ballandens of Brughton, who were lords and titulars of the erection of that Abbacy, (and which Brughton was excepted out of the act of annexation of kirk-lands 1587,) he came to have right to his own feu-duty. But the tenth act 1633, having annexed the superiorities of all kirk-lands again to the Crown, and only declared, that the feu-duties should be redeemable from the lords of erection, at ten years' purchase; and the fourteenth act of that Parliament declaring, that where they have acquired in the property of these feus, they must pay the old feu-duty contained in the ancient infeftments; and that Brugh-

ton is not excepted in these acts, but only in the thirteenth act, anent regalities of erections; therefore they found, that Sir John Nicolson's taking the lands holden of the King in 1669 for payment only of a merk of feu-duty, could not prejudge Heriot's hospital of the old feu-duty of 12 merks yearly; and that Sir William Scott of Clerkinton's infeftment in 1634, bearing that duty, was not a mistake, but conform to the fourteenth act 1633; though Heriot's hospital's right was from the Earl of Roxburgh and the Baron of Brughton, who had disponed the superiority before; only the Lords found it re-annexed again by the Parliament 1633. *Vol. I. page* 554.

1693. *February* 3. SIR JOHN GORDON of Park *against* SIR PATRICK OGILVY of Boyne.

THE Lords would not directly sustain that defence against the contract of agreement, that he was so supinely drunk, when he subscribed it, that he had not the use of his senses or reason; but, before answer, allowed either party a mutual probation, in what condition he was at the time of his signing. For knowledge and consent, as acts of the judgment and will, are both requisite when one contracts; and if these be obfuscate and wholly asleep, it is as unjust to tie him then as if he were mad or an infant. Yet this bears a reflection on the one party, that he filled him drunk to take advantage of him; and on the other, that he should have given way to his own intoxication. *Vol. I. page* 554.

1693. *February* 3. WYLIE *against* SCOTT.

WYLIE and Scott, about the wadset money on a booth. The Lords found the deceased Thomas Wylie's requisition did not make the sum moveable, so as to alter the destination and appointment of that sum which he had made to one of his sons, so as to bring in the executors with him. *Vol. I. page* 554.

1693. *February* 7. JOHN ANDERSON *against* HEW CORBET of Hardgray.

THE Lords thought the executor's confirming *per errorem* heritable sums, could not make his cautioner liable to account for them; albeit it may be presumed that he did it on his private knowledge that they were rendered moveable by a requisition or charge, which now might be abstracted. But in regard that the cautioner alleged the principal executor had now suspended Anderson the creditor's decreet, therefore, he could not be distressed till the principal executor and that suspension were discussed. And though this was a dilator, after a peremptor, yet being emergent, *et noviter veniens ad notitiam*, the Lords admitted it to stop sentence till the said suspension was discussed; and allowed the suspender to be cited *incidenter* for that effect. *Vol. I. page* 554.