a procuratory to resign, and warrandice. It was doubted if this was *habilis modus*, to convey heritage, or if it was a testamentary disposition.

The Lords found it had the force of a disposition, but withal it was revocable by the disponer: and because this right was made when he was going off the country, they found that his heir proving that it was in his hands, after his return, the same was a tacit revocation thereof, and so found it to belong to the heir; and yet they found it probable by witnesses, that he gave warrant to deliver it to the defender.

Act. Sinclar. *Alt.* Lockhart.

Advocates' MS. folio 59.

1667, *January* 31, and 1668, *February* 24. LADY MILNETOUNE *against* The LAIRD.

1667. *January* 31.—The Lady Milnetoune being married to Maxwell of Calderhall, her second husband: who disagreeing with her, she sells her liferent to her step-son, Sir Walter Whytford of Milnetoune: and he having before that disposition fallen in adultery, she pursues a divorce, and gets it, upon the probation of one single witness, and a number of concurring pregnant presumptions; wherein there was compearance, and witnesses adduced. Which decreet being thereafter called in question before the Lords, it was

ALLEGED,—That one single witness could not prove. *2do*, That the witnesses adduced were bribed, and got money to depone; so the question was, If *singularis testis*, in crimes, might prove. *2do*, If witnesses once adduced and received in judgment without any exception or objection *in prima instantia*, may be quarrelled *in secunda*, as to reduce the decreet.

The Lords found, that one single witness, with the presumptions, was relevant; and the rather, because it was known that Calderhall was a most vicious man; and as to the witnesses, they found it not competent now to make that a ground of reduction, but reserved reprobator to them on that head. *Vide infra* 24*th* February, 1668, thir same parties.

It may seem hard that when objections are omitted against witnesses which were not competent *in prima instantia*, being *noviter veniens ad notitiam*, that they should not be received *in secunda*.

But the notoriety of the thing induced the Lords thus to decide, and that the poor gentlewoman was reduced to great poverty.

Act. Cunyghame. *Alt.* Lockhart.

Advocates' MS. folio 57.

1668. *February* 24.—The Lady Milnetoune having got a divorce from her husband upon adultery, which was proven by witnesses who were alleged to be bribed by the Lady; this common objection against witnesses being omitted in the divorce, there is a reduction raised of this decreet on this ground, that the witnesses were corrupted; and the action was a reprobator of the witnesses upon whose deposition divorce

followed, and the questions ran, 1*mo*, If in law the depositions of witnesses might be reprobated *quoad dicta et testimonia testium* or only *quoad initialia*; as the objections against the inhability of witnesses being omitted in *prima instantia*, they might be reprobated in *secunda*. 2*do*, If the witnesses might be only punished in their persons, or if the sentence which followed on their depositions ought to fall; and what effect the probation of a reprobator of witnesses has in law.

Vide No. 307. [20*th* January, 1672.]

Act. Lockhart. *Alt.* Mackeinzie.

Advocates' MS. folio 59.

1668. *June.* The EARL of CRAWFORD *against* SIR JAMES STEWART.

SIR JAMES STEWART, Provost, being pursued by the Earl of Crawford to count for his intromission with the public monies; he obtruded the act of indemnity *in anno* 1661, whereby all men are discharged of all actions, crimes, &c. except usury, and such who meddled with the public monies, and who had not counted therefore, nor were discharged by the pretended authority for the time. But so it is, alleged Sir James, he had counted with the usurpers already, &c.

The Lords of Exchequer found the act of Parliament did not defend him.

Act. Wallace. *Alt.* Lockhart.

Advocates' MS. folio 60.

1668. *June.* The EARL of DUMFRIES *against* The LAIRD of WAMPHRAY.

IN a case between Dumfries and Wamphray, FOUND that a woman's liferent, belonging to her husband *jure mariti*, did fall both under the man's single escheat, and that it might be comprised from him; because a liferent having a tract of time, and being in *cursu*, was real. And yet if the *jus mariti* had been comprised before the man was rebel at the horn, the compriser had been preferred.

Act. Maxwell. *Alt.* Dunmuire.

Advocates' MS. folio 60.

1669. *January.* AYTOUN *against* ——

A sum of money being due to one Aytoun by an heritable security, and failyieing of heirs of her body it was provided to her sister; and in the contract of marriage betwixt this Aytoun and her husband, the said parties espoused jointly grant a discharge to the debtor, of the heritable sum; and in that same contract, the debtor grants a new security, also heritable as the former, to the man, and rela-