*first*, In so far as it would convel the testimonies as to the principal points referred to probation, against which no contrary testimonies, either of the same or other witnesses, can be admitted by the law of all nations; otherwise pleas should be infinite; for, if the second witnesses might improve the testimonies of the first, third witnesses might improve theirs, and so without end: and the allegeances that the parties were *alibi* are most irrelevant, and are ordinarily rejected, as being a contrary and incompatible probation; for, this being a crime unlawful at all times and places, albeit the witnesses should have forgotten or mistaken the time, if they be positive in the act, *non obest;* and so proving *alibi* at that time, which is not essential, is of no moment. *3dly*. The reprobators, in so far as they would improve and convel the extrinsic points of the testimonies, *ad hunc effectum*, to render the witnesses infamous, and their testimony invalid as to the whole, which is the proper and only subject of reprobators,—the same is not now competent, unless first, at the time of the taking of the testimonies, the pursuer had protested for reprobators, and had not referred his objections against the hability of the witnesses, to their own oaths, but had only interrogated them of their age, marriage, residence, freedom of partial counsel or corruption, &c.; and, upon the reason of their knowledge in that case, reprobators might have been competent to prove the contrary of these extrinsic points, and so infirm the testimony. But here, the witnesses being examined, especially as to the interrogatories of partial counsel, and as to the reason of their knowledge, and no protestation taken at that time for reprobators, he cannot now make use thereof; and, albeit that reprobators were reserved by the Lords, yet that was not at the taking, but at the advising of the testimonies, when all that is now alleged as to their corruption, arising from the reëxamination, did appear to the Lords, and yet the Lords adhered to the decreet of divorce and first testimonies. The pursuer answered, That he did not intend to convel principally the intrinsic points of the testimonies, but, mainly, to prove their partiality and corruption, and therewith, also, to prove their testimonies were false and impossible. Neither is it essential to protest at the taking of the testimonies; nor is there any necessity that the witnesses' oaths should not be taken on the extrinsic points; but, on the contrary, the intent of reprobators being, that their oaths, as to these extrinsics, being false, they should be found perjured and infamous, and the whole testimonies to fall.

There was no interlocutor, at this time, upon this debate.

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1668. *June* 25. INGLIS *against* LAIRD BALFOUR.

THERE being an unprinted Act of Parliament, for uplifting the tax and loan of the shire of Fife, for relief of some noblemen engaged for the shire, *in anno* 1661;—the council did thereafter give commission to certain persons in the shire to convene the persons resting, and accordingly cited the Laird of Balfour; and he not compearing, ordered quartering against him. He suspends, on this reason, That this being a private and particular Act of Parliament, to which he was not called, is *salvo jure*, and could not burden his lands of Creik, because he is singular successor therein to the Laird of Creik. It was answered,

That there is no exception of singular successors in the Act of Parliament; so that this Act, being a reviving of the old rescinded Act, *pro tanto*, it must be in the same case as taxation and maintenance, which is ever accounted *debitum fundi*. It was answered, That these burdens, imposed by the rescinded Parliaments, are not in the same case with other public burdens, especially where it is but a particular Act, relating to particular persons and shires, without citation of them; for, if they had known of this Act, they would have petitioned the Parliament that singular successors might have been excepted, as they were in other Acts of this nature. The Lords suspended the decreet, and found, That, as they were singular successors, they were not liable.

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1668. *July* 3. JOHN FRAZER *against* WILLIAM FRAZER.

JOHN Frazer having obtained a decreet against William Frazer, his brother, to deliver a tack of the lands of Boghead, granted to their father and his heirs, to whom the said John is heir,—William suspends on this reason, That he is heir to his father, of the second marriage, and produces his retour; and produces the contract of marriage, including a clause that all tacks conquest during the marriage should belong to the heirs of the marriage; and this tack being acquired during the marriage, the same belongs to him; and albeit it be conceived to the heirs generally, yet, by the contract, the pursuer, as heir-general, will be obliged to assign. It was answered, That this tack was no new conquest, but had been the old possession of the father; and the tack bear the lands to be presently possessed by him. The Lords found this tack to fall under the clause of conquest, unless the pursuer prove that there was an old tack standing, which expired not till the second marriage was dissolved, in lieu whereof this new tack was taken.

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1668. *July* 30. SIR GEORGE MACKENZIE *against* The LAIRD of NEWHAL.

SIR George Mackenzie, advocate, having married a daughter of John Dickson of Hartrie, they pursue a proving of the tenor of an inventory of Hartrie's lands, wherein he altered the former substitution of his children in several bonds, and particularly of a bond of 5000 merks, granted by Whitehead of Park, payable to himself, and, after his decease, to Helen Dickson, his youngest daughter, who was married to Ballenden of Newhal; and by the inventory the substitution was altered, and the one half of the bond appointed to pertain to Elizabeth, now spouse to Sir George M'Kenzie, and the other to Helen and Michael. To prove that the same was holograph, because it wanted witnesses, there were produced, for adminicles, the copy of it, written by John Kelloe's hand, Hartrie's nephew, and a judicial instrument, containing the tenor of it, by way of transumpt. But there were some words of difference between the instrument and the copy, which was subscribed by John Ramsay, Hartrie's good-