

followed, and the questions ran, *Imo*, 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*. *2do*, 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.* [20th January, 1672.]

*Act.* Lockhart.

*Alt.* Mackenzie.

*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 WAMPFRAY.

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-

tive to the former security. It falls out, the woman dies within year and day, without children, and leaves her husband her executor and universal legatar; and the heir of the wife craving repetition of the sum given *nomine dotis*, the question was, If the discharge given to the debtor of the security when it stood in the terms foresaid, was an innovation thereof, so that it remained no more heritable, nor could be claimed as belonging to the wife's heirs: the man in effect having received it in his own name, he was only liable in repetition *condictione indebiti*; for if the man had died within year and day, the wife had nothing competent to her but this action of repetition, and which action must fall under her testament and executry; *item*, she might have disposed thereupon; like as *de facto* she has done, by the testament above written, in favours of her husband.

The Lords found the discharge an innovation, and that there was nothing competent to the wife but the said action of repetition, which was moveable, and fell under testament.

*Act.* Cunyghame.

*Alt.* Lockhart.

*Advocates' MS. folio 60.*

1669. *January 20.* WAMPHRAY *against* his MOTHER-IN-LAW.

IN this cause found, that an instrument of kenning to a terce, needed not to be registrate as other seasines mentioned in the act of Parliament: and that a right of terce is drawn back to the time of the defunct's decease, though the relict be not kenned a long time thereafter; and yet if a third party *bona fide* meddled with the rent of the terce lands before the kenning, he will not be liable in restitution, but she will have action against the heir of the husband therefore.

*Act.* Lockhart and Dinmuire.

*Alt.* Maxwell and Cunyghame.

*Advocates' MS. folio 60.*

1669. *February 2.* LORD LINLITHGOW *against* SIR WALTER SEATON.

MY Lord Linlithgow having purchased the lands of Medhope, and taken right to an expired comprising of the same for 3000 merks, and thereon having charged Sir Walter Seaton, the superior, to enter him; he craves the benefit of the act of Parliament, by which the superior may make an offer to pay the sums for which the lands were appraised.

The Lords inclined to cause Sir Walter enter the compriser, notwithstanding of the act of Parliament, and that the act was to be understood of comprising yet running and not expired, and that the offer was not timeous nor the order prescribed by the act of Parliament kept.

*Vide Durie, 5th March, 1634, Black.*

*Act.* Cunyghame.

*Alt.* Sinclair.

*Advocates' MS. folio 60.*