directed by the former legacy, at least so swore her own son being one of the legatars. We generally agreed to vary the interlocutor sustaining the legacy, but the President moved the examining some more witnesses. Several of us thought a proof by witnesses not a habile proof to re-establish the legacy, and upon the question found there should no witnesses be examined.

No. 12. 1742, Nov. 2. WHITEFOORD *against* AYTON.

DR HAMILTON when he thought himself and truly was dying wrote a letter to Mrs Jean Whitefoord, wife of Captain Dalrymple, "I leave you my gold watch, &c. to be enjoyed by you after my death." The Doctor lived more than a year, and after his death Mrs Dalrymple pursued Ayton, who had been his landlord, for the watch, and referred the having to oath. He deponed that when the Doctor was at the goat-whey he gave the watch in a present to the deponent for the use of his son; and the time seemed to be about 12 months before the Doctor's death. The case came before Minto by advocation, who thought the letter imported only a *donatio mortis causa*, and therefore allowed the defender by witnesses to prove the delivery of the watch to him and his possession of it in terms of his oath. The pursuer reclaimed, for that the donation to her was irrevokable; 2dly, that it could not be revoked but by writ; and the defender also complained, for that the quality in his oath was intrinsic. We all agreed that the donation to the pursuer was revokable. 2dly, We generally agreed that a donation *mortis causa* was not proveable by witnesses, agreeable to 4th July 1678, Hume against Livingston.* But then I thought the pursuer's donation might be revoked either by a sale or donation *inter vivos*; and as this donation said to be made to the defender was so long before the Doctor's death, I was for allowing the proof before answer, though I thought the case of the defender's being the defunct's landlord was suspicious. President and Arniston agreed with me as to the sale or donation *inter vivos*, but thought that from the defender's oath, if any donation was made to him it behoved to be only *mortis causa*, and upon that ground it carried to refuse a proof, and repel the defence.

No. 13. 1744, Nov. 10. MITCHELL *against* PINKERTON.

WE agreed that a nuncupative legacy actually left though afterwards ordered to be put in writing and the testator died before signing, would be good as far as are nuncupative legacies, *i. e.* L.100; but the Court thought there was here no more proven than that the defunct intended to leave that legacy.

No. 14. 1745, Feb. 19. MR FRANCIS KERR *against* JOHN YOUNG.

A CONTRACT of marriage providing to the wife a certain share of household furniture and other moveable goods that shall be in the husband's possession or in common betwixt them the time of his decease, if he be the first deceaser, which was the event that happened,—the Lords gave the like judgment as they had done 18th February 1737, Dr Cunningham against Livingston, (No. 4.) and found the wife entitled to the share of all *corpora*, but not of *nomina* or current coin.

* DICT. APP. II. *voce* PRESUMPTION.