all personal at her father's death, albeit some of them were apprised for before she got her aliment. The defender answered, That there was a sufficient superplus, because she offered to take the lands, or find sufficient tenants therefor, for 4,300 merks yearly, which was £1000 above her liferent, and would exceed the annualrents of all the debts. The Lords found this last defence relevant; but did not proceed to determine whether an aliment would be due where the burden was but by personal debt.

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1668. *February* 7. The MINISTER of COCKBURNS-PATH *against* His PARISHIONERS.

THE minister of Cockburns-path, having obtained a designation of a horse and two kine's grass, conform to the Act of Parliament 1661, pursues a declarator of his right thereby. It was alleged Absolvitor, Because the designation was null, in respect it was, by the bishop's warrant, directed to three ministers *nominatim*, and it was performed only by two, the third not having come; and a commission to the three must be understood jointly, and not to empower any two of them, unless it had been expressed; likeas the Act of Parliament anent the grass requires the designation of three ministers. The pursuer answered, That, by the Act of Parliament 1661, the designation of grass is appointed to be according to the old standing Acts anent manses and glebes, which do not require three ministers,—that number being only required by the Act of Parliament 1649, which is rescinded, and not revived as to that point; and, seeing three ministers are not necessary, but that two are sufficient, the designation done by two is sufficient. The Lords sustained the designation, unless the defender show weighty reasons of prejudice upon the matter.

Vol. I, Page 521.

1668. *February* 26. The LAIRD of MILNTOUN *against* The LADY of MILNTOUN.

THE Lady Milntoun, having obtained decreet of divorce against John Maxwell, her husband,—the Laird of Milntoun, having right from her husband to her liferent, which right fell by the divorce, pursued a reduction of the decreet of divorce; wherein the witnesses being examined and reëxamined, the Lords adhere to the decreet of divorce, and assoilyie from the reduction. At which time the Lords having allowed him to insist as in reprobators, he now pursues the same for convelling the testimonies of the witnesses, because they were corrupted and suborned, both by promises and getting of good deed, and being prompted how to swear, as their oath on reëxamination bears: and because their oath is not only suspicious, but impossible; because it is offered to be proven that the parties were *alibi*, at a great distance from the place where the witnesses deponed that they committed adultery, and that for several days and nights thereafter, and before. The defender alleged, That the libel was no ways relevant;

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,