

No. 185. ploughed part of that very muir, which was the subject in controversy, and so would be a gainer or loser by the cause, and which the Commissioner for taking of the proof had sustained, was so far repelled as to allow the witness to be received, reserving the consideration of the objection till advising; the like occurring every day in questions about marches, where the tenant himself is always received.

*Kilkerran, No. 15. p. 602.*

No. 186.

1751. July 16. The KING'S ADVOCATE *against* HERDS.

The King's advocate insisting in a complaint against John and David Herds, for forging a bill, adduced as witnesses the alleged acceptors thereof.

Objected, They are inhabile witnesses, as interested in the cause: The complaint directly concludes that the bill should be declared forged; whereby they, by their own deposition, will be freed of their obligation.

Answered, They are no parties to this action; and can directly take nothing by the decret: When crimes are pursued by the King's advocate, and especially in crimes excepted with regard to the strict rules of evidence, the person lesed is admitted a witness.

The Lords sustained the objection.

*Act. Advocatus.*

*Alt. A. Macdowal.*

*D. Falconer, v. 2. p. 266.*

1751. November 22.

ALEXANDER IRVINE *against* ALEXANDER RAMSAY-IRVINE.

No. 187.

A witness having expressed resentment, and being purged, and no cause of ill-will shown, reprobator was not sustained.

Alexander Irvine of Saphock, by contract of marriage betwixt Alexander Ramsay, afterwards called Irvine, and Mary his daughter, disposed his estate to the said Alexander and his heirs-male; which failing, his heirs and assigns whatsoever.

Saphock died, and afterwards his daughter without children, whereupon Alexander Irvine, son of John Irvine writer in the Chancery office, to whom the estate had been destined by a former deed, raised a reduction of the disposition; insisting on Saphock's incapacity at the time of executing it; and adduced his relict as a witness: To whom it was objected, That she had on many occasions declared her malice and ill-will to the defender, wishing and praying that he might lose his cause; and uttered the most horrid imprecations against him, without any cause whatever: And this is offered to be instantly proved, by many witnesses who are presently in this place. These are the words in which the objection was made by the defender's agent, though not marked in the minute; as neither was the inter-