perhaps for years together, at the expense of L.40 Scots, and in the meantime the person claiming to serve might die; he therefore proposed that the service should in the meantime go on, leaving it entire to Count Antonio to reduce the whole procedure, in case he can prove the execution to be false. The reason why improbation could not be proponed in this case, *sub periculo causæ*, was, that Count Antonio's factory and commission to Mr Dundas, his doer, did not empower him to play so deep a game; and therefore the President's proposal was unanimously gone into.

N.B. A reclaiming bill was offered against this interlocutor, upon advising of which, with answers, the Court unanimously adhered.

1758. *January* 26. COUNT ANTONIO LESLY *against* GRANT.

IN this case the Lords found that a remoter heir of entail might pursue a declarator against an heir in possession, that he was an alien, and consequently incapable to succeed; although the pursuer was not the next heir when the alien was set aside, but there was a nearer entitled to take before the pursuer. In this case the declarator concluded also against that nearer heir, that he was Popish, and there were brieves taken out to serve the pursuer nearest Protestant heir, in which service it was to be proved that the nearer heir was a Papist. But some of the Lords put their opinion, not upon that specialty, but upon the general point, that any remoter heir of entail could pursue a declarator of irritancy against the heir in possession, because it was his interest to have one at least removed that stood before him, if he could not get them all removed; and so Prestongrange said it was decided in the case of Irvine of Drum, which was the first cause he had ever pleaded.

1758. *January* 26. ——— *against* ———.

A WIFE pursued a divorce against her husband on account of adultery. The defence was reconciliation, in so far that, after the adultery was committed, she had cohabited with her husband, and had a child by him. The answer was, 1*mo*, That she had not then any certainty of the fact being committed, though she might have had very reasonable grounds of suspicion; 2*do*, Suppose she had known certainly, yet her not separating from her husband immediately, but continuing to live with him in an ordinary matrimonial way, was no proof of her having forgiven him, or being reconciled; 3*tio*, Supposing this to be an evidence of her being disposed to forgive, yet there was a fresh provocation alleged, viz. an attempt to poison her, which made it lawful for her *revocare ad animum* the first injury. But these answers the Lords did not sustain, by the President's casting vote.