The Lords did repel the defences; notwithstanding that the Acts of Parliament bear that the creditor, *quoad* the debt whereof he is frustrated, should be first satisfied before the fisk can have any right; but statutes nothing for payment of the debt by the deforcer; as to which the debtor himself is still liable. But, in respect of the foresaid practick, and that if the libel had been expressly founded upon damage and interest, undoubtedly it would have been sustained upon that ground; and, therefore, they found the defender liable for the debt: seeing, otherwise, the creditor might be altogether frustrated, the debtor being freed from the caption, and so in a capacity to go away; and the deforcer might be a man of no fortune, and his moveables inconsiderable.

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1672. *December* 13. The LADY MILNTOUN *against* The LAIRD of MILNTOUN.

IN the reprobator, pursued at the Laird of Milntoun's instance against the Lady, for corrupting of the witnesses who had deponed in a process of divorcement, wherein she had obtained decreet before the commissary against her husband;—it was craved for the lady, by a bill, That she might have diligence for citing of witnesses to prove that the Laird himself had corrupted those witnesses; which, being proven, will incapacitate him to pursue this action of reprobator against her.

It was ANSWERED, That the desire of the petition could not be granted; because the Lady, having obtained decreet upon the depositions of the same witnesses, unless she would renounce the benefit thereof, she could not pursue a reprobator before the Lords against the Laird of Milntoun; for they are only pursued before the Lords *ad civilem effectum*, to take away decreets which are only founded upon the depositions of these witnesses.

The Lords refused to grant the desire of the bill; and found, That the Lady, craving the same only *ad vindictam*, and, notwithstanding, pursuing her interest upon the said decreet, which she would not renounce, could only pursue the reprobator before the justice.

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1672. *December* 17. The EARL of MARSHALL and LORD ARBUTHNOT *against* BARCLAY of JOHNSTOUN.

ARBUTHNOT, as assignee, by the Earl of Marshall, in and to a bond of 6500 merks, granted to the deceased Earl of Marshall by Barclay, bearing, that it was for a part of the price of the lands of Cletton, disponed in feu,—having charged Barclay for payment, he did suspend upon this reason, That, by a posterior contract of wadset of these same lands, wherein the first right of feu was resigned,—it was DECLARED, That the whole sums of money due as the price of the said lands were satisfied and paid; and, therefore, the bond being granted for that same cause, must of necessity be interpreted to be paid, and should have been delivered back to the suspender: which likewise may be evinced, in so far as the Earl did pay the 500 merks more than the 6000 contained in the bond.