

- No. 3. it was alleged by one of the Lords, that for the same cause witnesses were repelled of before, in the cause of the community of Renfrew and Rugland ; in qua causa erat quidam Pauper. R. Neilson. But this day, in causa communitatis de Selkirk non fuit decisum.

*Sinclair MS. (Second copy.)*

1541. February 16. P. GIBSONE against S. THOMAS WAUCH.

- No. 4. Thir persounis under-written may be repellit fra passing upon ony assise, and alswa fra beiring of ony testimonie or witness. In the *first*, the father of the partiè quha sould produce the witnessis, his sone, his cousing, his brother, or ony of his consanguinitie, affinitie, or allya, within the feird degre *inclusive*, Leg. Burg. C. 143. Bot it is to wit, that witnessis beand sib or attingent to the persewar and defendar, in the like degre defendand of consanguinitie or affinitie, aucht and sould nevertheles be repellit fra beiring witnessing ; because of the law of this realme, paritas gradus, seu par affectionis causa, non tollit suspicionem.

*Balfour, p. 377.*

1542. May 16. DOBIE against GLENBERVIE.

- No. 5. In a cause of non-entry of certain lands of Broadwoods, moved by John Dobie, donatar by the King's gift to the same at the King's Advocate's instance, against the Laird of Glenbervie, the Lords repelled *a testificando in illa causa*, the witnesses that were in degree descendant of consanguinity to the Laird of Craigiehall, albeit the summons was not intended at his instance, because he was hail solicitor, pursuer, and maintainer of the cause, and insisted therein upon his own expenses, as was notourly known to the Lords ; and so gave their interlocutor.

*Sinclair MS. p. 48.*

1542. February 16. DICKSON against VEITCH.

- No. 6. The Lords, in a cause of one Patrick Dickson of Dudhope against Sir Thomas Veitch, notary-public, and John Dickson for his interest, repelled certain witnesses produced by the said Patrick *ratione consanguinitatis in gradu prohibito inter ipsos et testes, licet testes ipsi allegant alteri parti in gradu æque propinquo* ; and that because that of our practicks, the theories of the legists and canonists, *quod par affectionis causa tollit suspicionem* has not place ; and also in the said cause, the Lords admitted the practick foresaid to prove an instrument, which he desired the said notary to give him, which the notary refused to

do, because he alleged that his protocol book was burnt in his chamber in Kelso, when Kelso was first burnt, and that he could not remember perfectly what the instrument contained; therefore the Lords admitted to the said Patrick to prove by witnesses the burning of the said protocol and the tenor of the instrument; and that it was whole, and not vitiated by them that had it, and show the same to that effect, that the notary might be compelled to give furth a new public instrument.

No. 6.

*Sinclair MS. p. 27.*

1542. March 15. LAIRD OF PITBLADO against M. JOHNE SPENS.

No. 7.

Albeit the servand, or ony man, may not be witness for his lord or master; nevertheless his lord and master may be witness in ony cause for him that is presentlie, and at the samin time his man or servand.

*Balfour, p. 377.*

1544. March 20. ALEXANDER ADAMSOUN against JOHN JOHNSTOUN.

No. 8.

Thir persounis may be repellit fra passing upon assise, or beiring of witnes, viz. he that is partner with the partie that sould produce the witnessis; he that is hyrit and conduit throw neid, profit, and winning; he that is the partie's deidlie enemie, and so; *Leg. Burg. C. 143. De Except. C. 17.* Because inimitie and feid standand betwix the partie and the persoun that is callit to be witness aganis him, is a sufficient cause to repel him fra beiring of witnessing. Nevertheless, gif lawborrowis being found be ony persoun to ane uther, and it happin him quha fand the samin, efter the finding thairof, to be summoundit and chargin be ony of our soverane Lord's liegis, to beir teill and suithfast witnessing in ony action or cause aganis him to quhom the samin was fund, he on na wayis sould be repellit, bot sould be admittit as witness, notwithstanding that he is under lawborrowis to him; because the samin was fundin befor that he was sommondit to beir witness in the matter.

*Balfour, p. 378.*

1550. February 5.

A. against B.

No. 9.

In an action for delivering of an obligation, for proving thereof was an instrument produced; to the which were only three women witnesses, which was thought insufficient, because there was no man inserted therein.

*Maitland MS. p. 104.*