

No. 41. and so must be presumed to bear him at great ill-will. Answered, That the witness will make faith he bears not ill-will to the proponer; repels him *a testimonio ferendo*.

Item, The other witness within this 15 days, begged almes frae the defender, and got both meat and silver. Answered, The witness has free gear worth the King's unlaw. Repells him *a testimonio ferendo*.

Item, Another witness is accused before the justice of theft, and admitted on caution to answer at the next ayre, or on 15 days warning, and so is infamous. Answered, He is not convict. Admits him witness. Protested if he be convict *ante conclusum in causa*, his deposition work not.

The witness is tenant to the producer, in so far as he has a house of him for payment of a mail in the town of Leith. Answered, Leith is a burgh of regality or royalty, and tenants of houses within burghs of regality or royalty may be witnesses in their landlord's causes, because they have no commodity of the house by the worth of the habitation which they pay their landlord; and if they were removed, they might have another as commodious easily *in tanta frequentia*, so that they are not so suspect of partiality in favours of their landlord, seeing they must not fear his removing. Admits the witness.

Nicolson MS. No. 544, 545, and 546, pp. 374. and 375.

1623. June 11.

WATSON against GRINLAW.

No. 42.

In an action betwixt Watson and Grinlaw, a witness produced for a party who dwelled in a house within Leith, pertaining to the producer, and being tenant therein to him removeable, for payment of mail and duty; the Lords found, that notwithstanding he was tenant removeable, yet he might be witness, and that this was no cause to repel him, seeing he was only his tenant within burgh of a house, and that such tenants of houses within burghs-royal might be witnesses for them, to whom they were tenants, and found in this cause Leith to be respected as a burgh-royal.

Act. Stuart.

Alt. Lawrie.

Clerk, Hay.

Durie, p. 64.

* * This case is reported by Haddington :

He who is tenant of a tenement within burgh, will not be repelled from being witness in his landlord's cause, albeit a tenant of field-land may not be witness for his master; and the custom of receiving tenants within burgh witnesses for their

masters was extended to Leith, albeit it be not a free burgh, because it is greater, and tenements dearer in it nor in any other burghs.

Haddington MS. v. 2. No. 2358.

No. 42.

1624. November 6. L. BONNINGTON *against* CRAWFURD.

No. 43.

In an action betwixt the L. of Bonnington and Malcolm Crawford, the Lords found, that albeit one of the witnesses who were produced by the L. Bonnington, was within degrees of blood, which of law repelled witnesses if the descent had been from a lawful conjunction, yet that the witness might be admitted, likeas he was admitted to bear witnessing, seeing the reckoning was from a bastard, who of the law is reputed to be procreated *ab incerto patre*, and so not to make consanguinity; and therefore the same was found no cause to repel the witness; albeit it was alleged, that he being of a bastard took not away the ground and reason of affection. Nam Bartol. dicit eos non posse recipi ob affectionem naturalem.

Yet this hath been usually done.

Act. *Cunningham.*

Alt. *Belsches.*

Clerk, *Gibson.*

Durie, p. 143.

1625. July 29.

A. *against* B.

No. 44.

In an action betwixt two parties, the Lords found, that any person, who had a tack for certain years enumerated in the tack, as a nineteen year or fifteen year tack, or sicklike, and where the tack was not specially for the tacksman's life-rent, he might not be witness to him who set the tack; but if the tack were a liferent-tack, he might be witness; wherein I perceive not any great reason of difference.

Clerk, *Scot.*

Durie, p. 183.

* * * The following seems to be the same case :

1625. July 29.

SIR JOHN SCOT of Scotstarbet, *against* The LAIRD of BARNES.

No. 45.

Sir John Scot of Scotstarbet pursues contravention against the Laird of Barnes, Leads witnesses for proving his libel. Objected against one of them, He has tack of lands set to him by the producer Sir John for 17 years to run, and so removable after 17 years. Answered, *Non relevat*, Because having tack he is not removable at the producer's pleasure. The Lords find the objection relevant, unless it were alleged he had a liferent-tack.

Nicolson MS. No. 42. p. 22.