

No. 46. 1627. July 17. THOMSON *against* BALLANTINE.

A direction given by a merchant to a mariner to bring out of London some shanks litted there, and to stow them in some secret place of the ship for deceiving of the customer. The ship being cast away, and the mariner pursued for the shanks, proponed the foresaid defences; which the Lords sustained to be proved by witnesses.

Auchinleck MS. p. 253.

No. 47. 1627. March. NORBAT ENGLISHMAN *against* ———.

The Lords found in an action of one Norbat Englishman, that witnesses being out of the country, summoned once upon sixty days, needed not, in the terms of denunciation and caption, to have diligence reported against them, upon the intervening space of 60 days, albeit they were still out of the country; but that these terms ought to proceed against them, as against other witnesses within the country.

Act. Hope. Alt. Ja. Gibson. Clerk, Gibson.

Durie, p. 289.

No. 48. 1628. January 10. SIR JAMES DUNDAS *against* SWINTON.

A party admitted to be witness who had made *cessionem bonorum*, because he was not infamous although poor.

In removal of tenants, the son received witness to the tenants against their master, notwithstanding he was *in familia paterna*,

Auchinleck MS. p. 254.

* * Nicolson reports this case:

Cunningham alleged David Borthwick, witness produced by the pursuer, could not be witness because he was put to liberty *ex cessione bonorum* by decret, and so being bankrupt by the act of Parliament against divers *est infamus*. Answered, *Cessio bonorum non notat infamia*, and the act is not against cedents *bonis judicialiter*, but against divers annalzieing fraudfully. Receives him witness by interlocutor reported from the Inner-house after the proponing instantly by Innerteill: Cannot be received the witnesses, because the producer is at the horn. *Hem*, one of them cannot be witness, because he is *in familia paterna*, and the father is the producer's tenant. Answered, He is a cordiner of his craft, and works now and then in the country, and for the first, it is the witnesses who are not at

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the horn that craves to be received. Receives not the witnesses produced by the rebel: Receives the cordiner by interlocutor. No. 48.

Nicolson MS. No. 536. p. 371.

1628. January 10. PATERSON against LAIRD of GRANGE.

No. 49.

A rebel may be debarred to use witnesses though they be at the Bar.

Auchinleck MS. p. 254.

1628. November 19. A. against B.

No. 50.

A procurator may be used as witness against his client, for proving the having of a writ for production whereof his client is pursued.

Auchinleck MS. p. 254.

1629. July 10. WELLS against MUIRHEAD.

No. 51.

The skipper of a ship admitted witness *cum nota* to prove the delivery of victual transported by him to a factor at London, albeit it was alleged that he might lose or win in the cause, seeing by his charter party he would be obliged for delivery in case a factor denied the same.

Auchinleck MS. p. 254.

1629. December 4. CRICHTON against WATSON.

No. 52.

Robert Crichton, Sheriff of Nidsdale, being charged by Andrew Watson to take and apprehend the Laird of Closeburn, suspends, that he was ready to obey, and desired the officer and party to go with him, and show him the rebel; which they refused, and that he, notwithstanding, went immediately after the charge to the house of Closeburn, and searched, but could not find the rebel, where upon all the premises he took instruments. It was replied, that the pursuer offered him to prove by witnesses that he offered to go with the Sheriff; but the Lords repelled this reply in respect of this instrument produced.

In the same suspension it was alleged by Watson, that he offered to prove by witnesses, that since the charge the Sheriff intercommuned with the rebel, in places within the sheriffdom, where he might have apprehended him. The Lords found the allegiance relevant to be proved by witnesses, the pursuer first condescending