

1633. *January.* WALLACE of CRAIGIE *against* MAXWELL of PETERNILL.

No. 62.

If witnesses summoned to depone be at the horn, upon supplication the Lords use to give them protection for some few days that they may depone.

*Auchinleck MS. p. 256.*

1642. *February 2.* MURRAY *against* MERCHISTON.

No. 63.

In a process at the instance of an executor-creditor against a debtor of the defunct's, it was alleged for the defender, That by the defunct's order, he had made payment of the sum to taylors, baxters, &c. to whom the defunct was owing; this order was not found probable by their oaths to whom the payments were made, seeing they had an interest in the cause.

*Durie.*

\* \* This case is No. 205. p. 12398. *voce* PROOF.

1662. *February 24.* HALBERT IRVINE *against* MACKERTNAY.

No. 64.

This day, in a spuilzie betwixt Halbert Irvine and Mackertnay, the defender principally called, having proponed a defense, upon a disposition and delivery of the goods in question, and craving to prove the same, by others of the defenders, called as accessory, as necessary witnesses, alleging, that the pursuer had called all that were present upon the ground, as accessories, that thereby he should get no witnesses;

The Lords ordained the pursuer in the spuilzie, to declare whether he would insist against these others, as accessory, or as applying any of the goods to their own behoof, or if he would not, allowed them to be received as witnesses; and if he did insist against them, ordained the process against the principal party to sist till the accessions were discussed, that such of them as were assoilzied might be used as witnesses.

In a spuilzie many persons being called as accessories, the Lords declared that they would ordain the pursuer to insist against the accessories first, that such of them as were assoilzied might be witnesses.

*Stair, v. 1. p. 104.*

1664. *July 8.* EARL of AIRLY *against* JOHN M'INTOSH.

No. 65.

The Earl of Airly pursues John M'Intosh for contravention, and libels these deeds, that the defender's herds had been found pasturing several times far within his ground, for a considerable time; which ground was without all controversy the pursuer's.