

No 528.

1628. July 20.

CUMING *against* CUMING.

THE testimonial of a reader, or minister, concerning the age of any person, is not a sufficient probation, but an adminicle.

*Fol. Dic. v. 2. p. 261. Auchinleck, MS. p. 153.*

No 529.

Confession to the church, and standing a year, was not found to prove adultery to infer the party's escheat.

1662. January 9.

BAIRD *against* BAIRD.

BAIRD, in St Andrews, having taken the gift of his brother's escheat, upon his adultery, pursues declarator thereupon. The defender *alleged* no process, till the crime were cognosed in the Criminal Court, or at least he were declared fugitive and denounced, for then by the horning his escheat would fall, but there is no law nor statute making the penalty of adultery to be the adulterer's escheat; for Queen Mary's statute anent adultery is only making notour adultery capital, but nothing as to other adulteries. The pursuer *answered*, That custom had made the penalty of adultery to be the single escheat; and for probation of the adultery, in this case, the defender had publicly confessed it, and had stood in sackcloth for it a year, and had taken remission from the King. The defender *answered*, That confession in the kirk was necessary to purge scandal, when such probation was adduced, as churchmen allowed to infer confession, which is but *extrajudicialis confessio*, and cannot prove *ad civiles aut criminales effectus*, neither can the taking of the King's remission instruct these crimes, seeing remissions are frequently taken to prevent accusations or trouble.

THE LORDS found the libel not relevant, and that no declarator could pass, unless the defender had compeared judicially in a criminal court, and there confessed, or had been condemned by probation, but that the confession in the church, or taking remission, was no sufficient probation.

*Fol. Dic. v. 2. p. 262. Stair, v. I. p. 77.*

No 530.

Certificates & declarations prove nothing unless where they are taken in process and by commission.

1670. January 28. ALEXANDER WISHART *against* Sir WILLIAM DAVIDSON.

ALEXANDER WISHART being employed by Sir William Davidson to be director of his mineral works in Norway, and for alleged malversations having caused imprison him in the town of Drontown, and by a transaction before the Magistrates of the town they having made an agreement, whereby Wishart was discharged of the damage and other things Sir William could lay to his charge; the said Alexander did likewise discharge him of all action or suit whereby he could trouble or molest him, reserving only that he might