

1670. January 19. LORD BALMERINO against LADY COUPER.

In the reduction pursued at Balmerino's instance of the disposition of the estate of Couper, made to the Lady *ex capiti lecti*, both parties being suffered to lead witnesses that their depositions might lie *in retentis*, there were objections made against two witnesses adduced by the Lady, viz. That one of them was the officer to the regality court, who had a standing fee or place, but was removeable at pleasure. This was found relevant to debar him from being a witness, albeit it was alleged that he was no domestic servant, nor had any pension or fee paid by the Lady, but had his livelihood from the parties that employed him. The second objection was, that one Nairn of Tullifergus could not be witness, because he was a tacksman to the Lady *per tacitam relocationem* only, his tack being expired the last Whitsunday, and so was removeable. It was answered, that the said Nairn was a heritor and proprietor of lands belonging to himself, which were not holden of the Lord Couper, and so could not be suspect as witnesses whose estate and possession depend upon their master's pleasure. The Lords, notwithstanding, found the objection relevant to cast the witness.

Gosford MS. p. 93.

No. 70.

An officer of a Baron court, although without fee or pension, found inadmissible as a witness.

A tenant holding by tacit relocation inadmissible.

1670. February 2. ALEXANDER JACK against COLONEL BORTHWICK.

Alexander Jack alleging that he subscribed a blank to have been filled up in a bond of cautionry, in a suspension, which was found among the writs of umquhile George Jack, as a blank paper, who lived several years thereafter; and after his decease, his relict finding the same, caused fill up in the blank, a bond of £10,000, as being borrowed from Thomas Boyd of Pinkill, and is now in the person of Colonel Borthwick; who having charged thereupon, the said Alexander Jack suspended, and raised reduction on this reason, that he had never any meddling, or borrowing with the said Thomas Boyd; but that the said bond was a blank paper, found among the writs of the said deceased George Jack, and neither he nor the said Alexander were ever worth so great a sum; and now seeing Colonel Borthwick did not insist in his charges, Jack was necessitated to proceed to take away the bond, and craved that the Lords would examine witnesses, *ex officio*, upon the truth of this reason.

The Lords ordained the writer, and the witnesses to be first examined, *ex officio*, and thereafter other witnesses, as the Lords should see cause.

Stair, v. 1. p. 666.

No. 71.

Witnesses examined *ex officio* relative to a blank writ.