

No. 79. The Lords found, That he could not be a witness, though he was a person of integrity above exception ; and that he was free to declare that, at the said consultations, the point whereupon he was to be used as a witness was not in consideration.

Clerk, *Gibson*.

*Dirleton, No. 441. p. 215.*

1677. *February 8.*

LUDOVICK STEWART and Others, *against* THEODORE MONTGOMERY.

No. 80.  
A witness renouncing his interest in the cause may be received.

In an action for proving the tenor against Theodore Montgomery, there being one George Montgomery cited as a witness, it was alleged, that he could not be received because he might tyne and win in the cause, in so far as he had a right of wadset of a part of these same lands of Auchenhead, granted to him by the Earl of Eglintoun. It was answered, That his right was only a wadset, and besides his infetment, he had sufficient caution in case of requisition, and so was in no hazard to win or tyne in the cause. The Lords did find, that unless he would renounce his right of wadset, and take him to his security by cautioners, he could not be received a witness, seeing without his renunciation he kept it still in his option to make use of his infetment, or to require and pursue the cautioner.

*Gosford MS. p. 634. and No. 956.*

1678. *July 18.* CALDWELL *against* CALDWELL, and A. *against* ROLLO.

No. 81.

Being queried, If a curator, after expiration of his office, might be witness where it tended to his exoneration, since he never intromitted, and was alike sib to both ; the Lords resolved he might.

In another query, If a tutor could be admitted to prove the passive titles against the Lord Rollo, whose pupil had the like action on the passive titles ; the Lords determined negative, except *in penuria testium*, and then to be received *cum nota*.

*Fountainhall MS.*

1678. *November 27.*

TAIT and His WIFE *against* FORREST and His CAUTIONER.

No. 82.

A cautioner for a taverner being pursued for what she was wanting in her account of wine, alleged that her mistress by a back-door had at several times drawn off the wine ; which being found relevant, witnesses were adduced, and amongst